

Ms Tania Wolf
President, Law Institute of Victoria
Level 13/140 William Street,
Melbourne VIC 3000

4 July, 2021

Dear Ms Wolf,

RE: Corruption Complaint – Request for Law Institute of Victoria Assistance

Introduction

1. I write to you on advice from Mr Peter Docherty, Head of Professional Standards and Quality Assurance. Ms Fiona McLeay, Victorian Legal Services Commissioner (VLSC), has prevented the renewal of my Practising Certificate for 2021/2022 without warning and without reasons having been provided after I had “blown the whistle” on corruption in her office.
2. This occurred after I had provided information to the Law Institute of Victoria (the LIV), as my professional association, on the understanding that my corruption complaint and related matters would be pursued on my behalf by the LIV.
3. I became concerned when the LIV went quiet on my matter, failing to reply to me and failing to contact a colleague whom I had nominated as being able to provide corroborating material. On 19 May, 2021, a month after I had discussed my corruption revelations with LIV Member Engagement Officer, Ms Olivia Jenner, I wrote to the LIV requesting a timeframe for further discussion on the very serious matters I had raised, but still received no reply.
4. On 26 May, 2021 I received a letter from the VLSC, signed by Ms Fiona McLeay. The letter stated that the VLSC “*must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate.*” The letter gave no reason or basis for my being considered not fit and proper, but indicated that the LIV had been appointed as the delegate of the VLSC.
5. The following day I wrote again to the LIV to express my disappointment and disgust with what was transpiring, and I made my suspicions clear:

“Despite your assurances and my follow-up emails, neither I nor Mr Lynn have heard anything from you or from anyone else in your office.

Yesterday I received a communication from the Victorian Legal Services Commissioner (see attached) advising me that the issuing of my Practising Certificate was once again being delayed, purportedly in relation to my being a ‘fit and proper person’.

I now suspect that your contacting me, as you put it in your email of 19 April, 2021, “quite out of the blue” and inviting me to provide you with “feedback”, was merely a ruse, the purpose of which was to elicit from me information that the Law Institute of Victoria could use against me in order to provide the Victorian Legal Services Commissioner with the outcome she desires.

I now require you to place this email on record, together with the related emails exchanged since you contacted me, for future reference.”

6. Later that day I received an email from Mr Duncan Pittard, LIV General Manager Member Experience & Support, advising me as follows:

"I understand you have asked the LIV to consider initiating a complaint to IBAC to support your allegations, however we are not in a position to do this, as we have not been directly impacted nor are we aware of the issues surrounding your claims."

The absurdity of Mr Pittard's response is discussed further below.

7. On 28 May, 2021 I received an emailed letter from Mr Peter Docherty stating, "...the LIV confirms acceptance of the delegation functions pursuant to sections 44 and 45 of the Uniform Law to recommend if you are a fit and proper person to hold a practising certificate."
8. It was now quite clear to me that the LIV, having originally accepted my "delegation" and having undertaken to investigate the serious complaints I had made against the VLSC, had now abandoned me and accepted the role of delegate of the VLSC in order to pursue me by way of a baseless "investigation" into my being a fit and proper person.
9. During a telephone conversation with Mr Docherty on 1 July, 2021 I reiterated complaints about the "investigation" Mr Docherty had initiated, and I expressed concern that there remained no avenues of complaint that I could follow. Mr Docherty advised that I should write to the President of the Law Institute of Victoria.

Conclusions

10. I am a whistle-blower who has exposed criminal and corrupt conduct in the office of the Victorian Legal Services Commissioner. After all avenues of redress and complaint (including the LIV) were exhausted, I publicly disclosed the conduct via the internet.
11. I believe that it is as a direct consequence of my having exposed corrupt and criminal conduct involving Ms Fiona McLeay that my Practising Certificate has been withheld, and a bogus "investigation" into my being a fit and proper person has been initiated.
12. I believe that the purpose of the "investigation" is to find a pretext for the withholding of my Practising Certificate and to provide a distraction from the corrupt and criminal conduct I have exposed.
13. I now seek your assistance and that of the Law Institute of Victoria achieving either, or both, of the following outcomes:
 - a. Ending the bogus investigation initiated by Mr Docherty and referring the entire matter (i.e. my corruption complaint and Ms McLeay's withholding of my Practising Certificate) to IBAC with the recommendation that an own-motion investigation should be commenced; and/or
 - b. Replacing Mr Docherty and Judge Ian Gray with truly independent investigators who will treat this matter as a search for the truth, rather than a search for a pretext.

Chronology

14. In June, 2020, after exhausting available avenues of complaint, and concerned that anything other than an IBAC initiated own-motion investigation would fail, I published allegations of corrupt and criminal conduct, together with items of supporting evidence, on a website I had created at <https://www.petermericka.com.au>. The purpose of my publishing the material was to create an ongoing repository of disclosures and supporting evidence in the hope and expectation that a full investigation into VLSC corruption would ensue.
15. I had anticipated a strong reaction from the VLSC and persons named on my website in the form of an investigation into the veracity of my allegations, or into my being a fit and proper

person, either of which would have allowed me to demonstrate the truth of the allegations and the extent of the criminality and corruption I had exposed.

16. No investigation was initiated, and apart from a broad denial and a failed attempt by the VLSC to have my website shut down (the VLSC engaged the law firm Minter Ellison to write to my internet service provider threatening legal action unless my website was removed by 4 p.m. on 17 August, 2020), no action was taken against me.
17. Shocked that the VLSC would surreptitiously attempt to have my website removed, instead of taking the more obvious steps of advising me that an investigation into my conduct was to be commenced, I made application for a formal "Certificate of Fitness".
18. The website of the VLSC states:

"We can prepare a Certificate of Fitness for lawyers who have either been admitted to practise in Victoria, or who have held a practising certificate in Victoria. The certificate states:

- *the date that you were admitted to practice in the Supreme Court of Victoria*
- *any conditions or restrictions on your current practising certificate*
- *whether or not you currently hold a practising certificate*
- *whether or not you have ever had a practising certificate suspended or cancelled in Victoria*
- *whether or not an order has ever been made to suspend you from practice in Victoria*
- *any prior disciplinary findings made against you in the last 5 years (including decisions under the Legal Profession Act 2004 and the Legal Profession Uniform Law (Victoria))*
- *any disciplinary complaints in relation to your practice as a legal practitioner in the State of Victoria which are currently under investigation or preliminary assessment."*

It was the last of the above dot-points that was of interest to me, as I wanted to discover whether or not any secret investigation had been commenced and, if so, the basis of such investigation.

19. On 16 September, 2021 I received my Certificate of Fitness, with no pending investigations disclosed. The issuing of the Certificate of Fitness confirmed to me that although my website contains serious allegations against specific VLSC staff and the VLSC herself, the truth of my disclosures was not being challenged other than by way of broad and unsubstantiated denials sent to me personally. There was no attempt whatsoever to demonstrate that any of my allegations were unfounded.
20. Between the issuing of my Certificate of Fitness and my application to the renew my Practising Certificate I received no notification, warning or advice from the VLSC that my status of being a fit and proper person to hold a Practising Certificate was in question.
21. I applied for the renewal of my Practising Certificate on the same day as I received the standard renewal notice from the office of the VLSC, and I fully expected that it would be renewed in the normal way.
22. On 6 May, 2021, noting the unexplained delay in the renewing of my Practising Certificate I wrote the VLSC with the following request:

"Please advise as to the true reasons for the withholding of my Practising Certificate and why I have not been informed regarding its being withheld."

23. I followed up with a number of requests for a response, but received nothing in reply.

24. On 19 April, 2021 I received an unsolicited and quite unexpected telephone call from Ms Olivia Jenner of the Law Institute of Victoria. Ms Jenner asked me about my satisfaction with the Law Institute and I told her that I was very dissatisfied with my professional organisation due to its failure to deal with the corruption I had brought to its attention over previous years. Ms Jenner sought further details and so I provided her with a description of the criminal and corrupt conduct I had experienced with the VLSC. I also provide Ms Jenner with the details and telephone number of a colleague who could corroborate the information I had provided to her, and she confirmed that he would be contacted.
25. Later that same day I received an email from Ms Jenner advising as follows:
- “Following up on our conversation, I wanted to thank you for the information you provided. Member feedback helps us to ensure we’re aligned with your needs and expectations, and the needs of the profession, and are very much appreciated.*
- I have escalated this up to my direct managers as we discussed and will receive contact from them shortly.”*
26. On 19 May, 2021, having heard nothing further from the Law Institute, and discovering that no-one had called my colleague to confirm the information I had provided to Ms Jenner, I wrote to Ms Jenner and expressed my disappointment.
27. On 26 May, 2021 I received an emailed letter signed by Ms Fiona McLeay, stating that the VLSC “...must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold a practising certificate.” The letter went on to state that, “...the Victorian Legal Services Board has delegated the functions pursuant to sections 44 and 45 of the Uniform Law, amongst others, as they relate to you, to the Law Institute of Victoria. The Law Institute of Victoria will be in contact with you shortly.”
28. **IMPORTANT:** Ms McLeay’s letter gave no indication as to why she considered that I am not a fit and proper person, and I submit that this failure is a deliberate and corrupt denial of Procedural Fairness.
29. I further submit Ms McLeay’s failure to state a basis for considering me not a fit and proper person is that there is no basis at all. This was later confirmed to me by Mr Peter Docherty (see below).
30. I further submit that Ms McLeay’s conduct in relation to my Practising Certificate and ensuing “investigation” is a serious aggravation to the criminal and corrupt conduct I have complained of, and indicates that Ms McLeay has neither insight nor remorse in relation to that conduct.
31. The following day I wrote again to Ms Jenner, setting out my view of the circumstances:
- “...I now suspect that your contacting me, as you put it in your email of 19 April, 2021, “quite out of the blue” and inviting me to provide you with “feedback”, was merely a ruse, the purpose of which was to elicit from me information that the Law Institute of Victoria could use against me in order to provide the Victorian Legal Services Commissioner with the outcome she desires.*
- I now require you to place this email on record, together with the related emails exchanged since you contacted me, for future reference.”*
32. A few hours after I had written to Ms Jenner I received a response from Mr Duncan Pittard, the Law Institute’s General Manager Member Experience & Support. Mr Pittard offered the following explanation for the Law Institute’s failure to act on my behalf:

“I understand you have asked the LIV to consider initiating a complaint to IBAC to support your allegations, however we are not in a position to do this, as we have not been directly impacted nor are we aware of the issues surrounding your claims.”

33. I later explained to Judge Ian Gray (by email on 21 June, 2021) the absurdity of what Mr Pittard was putting to me:

“1. Mr Pittard states that my allegations do not directly impact the LIV. I submit that this is incorrect, as I am a paid-up member of the LIV and I have made extremely serious allegations in my capacity as a legal practitioner and as a member of the LIV against the profession's regulator - that regulator being entitled to delegate discipline-related responsibilities to the LIV. The LIV is most certainly directly impacted by my allegations.

2. Mr Pittard states that the LIV is not aware of the issues surrounding my claims. This is easily remedied by seeking further information from me, and by following other obvious avenues of enquiry.”

34. On 28 May, 2021 I received an emailed letter from the Law Institute, stating as follows:

“Further to letter from the Victorian Legal Services Commissioner dated 26 May 2021 the LIV confirms acceptance of the delegation functions pursuant to sections 44 and 45 of the Uniform Law to recommend if you are a fit and proper person to hold a practising certificate.

In accepting this delegation, the LIV Council determined it was appropriate to engage an independent investigator to undertake an investigation. The investigators findings and recommendations will be made to the LIV Council to ultimately decide the outcome.”

35. I was appalled that my professional association, which had contacted me and sought information about my corruption allegations against the VLSC would then turn against me and willingly “accept” the delegation of the very person against whom I had made allegations of criminal and corrupt conduct.
36. I was also dumbfounded by the statement, *“...the LIV Council determined it was appropriate to engage an independent investigator to undertake an investigation.”* On what basis was it “determined” that an investigation was warranted? And how could the investigator be “independent” if he or she were to be engaged by the VLSC, albeit through her delegate the Law Institute of Victoria?
37. As I later described to Mr Peter Docherty, I felt that I was in a Kafkaesque position of being accused of something, and suffering a sanction for that of which I was accused, but never being informed of the nature of the accusation nor the identity of the party accusing me.
38. To put it another way, I had accused the VLSC of criminal and corrupt conduct, my allegations are supported by admissible evidence, all attempts to have my allegations investigated have been refused or thwarted, and the person against whom I have “blown the whistle” had arranged for my own professional organisation to cease assisting me, and to assist her in initiating an investigation the basis and the purpose of which I was not entitled to know.
39. My first thought was to object to the process, invite Judge Gray to recuse himself on the basis that he was not independent and had accepted unreliable information from the person he had been appointed to assist. However, I accepted advice from a colleague and went along with the process in the hope that Judge Gray would eventually apprise me of the basis for the withholding of my Practising Certificate and the nature and basis of his investigation.
40. I became quite apprehensive when Judge Gray emailed me on 10 June, 2021 to arrange a meeting, and told me:

“...the time frame for the investigation and report is fairly tight”

which indicated to me that everything was to be rushed. Nonetheless, I decided to see how things would transpire, as it was also possible that the absence of any stated basis for renewal of my Practising Certificate would mean that the matter would be quickly disposed of in my favour.

41. This apparent need for speed was confirmed at the final paragraph of the Law Institute letter of 28 May, 2021:

“Judge Gray is due to make his findings and recommendations to the LIV Council by 18 June 2021 to allow a determination to be made prior the 30 June 2021.”

42. My apprehension about the investigation was heightened when, on 15 June, 2021, Judge Gray sent me a list of issues/questions he intended to put to me at our meeting. It appeared to me that the questions may well have been drafted in the office of the VLSC, as they focused solely on my approach to disclosing the VLSC’s corrupt and criminal conduct, without any reference to the content or veracity of the disclosures. (A copy of the questions and my written responses to them is attached.)
43. Given the extremely *“tight”* timeframe, and the need for Judge Gray to make his findings and recommendations to the LIV Council so that a determination being made prior to the 30 June, 2021, our meeting was arranged for Friday 18 June, 2021.
44. At the meeting Judge Gray’s interrogation was confined to my having published details of the VLSC’s corrupt conduct on the internet. The truth of the allegations was not questioned.
45. I regarded Judge Gray’s questions as irrelevant, given the totality of the circumstances, but I went along with them and answered them truthfully and to the best of my ability, given the rushed nature of the “investigation”.
46. I also found the questions intimidating and confronting, particularly the following questions:

“Why you consider yourself a ‘fit and proper’ person to have your Practising Certificate renewed; see Section 45(2) of the Legal Profession Uniform Law (Victoria)”

This question indicated to me that Judge Gray considered that I was ‘not fit’ and proper, and was requiring me to convince him otherwise. Or, to put it another way, no legal practitioner is asked this question unless there is doubt about their being ‘fit and proper’. As there had been no allegations of any kind put to me, it seems that the purpose of this question was to put me on notice that I was not in a good position.

“Whether you consider yourself a lawyer of ‘good fame and character’; see rule 13(1)(a) of the Legal Profession Uniform Rules”

I found this question insulting and inflammatory, as well as intimidating. Judge Gray knew that the only reply I could possibly give was in the affirmative, but he went ahead and asked it anyway.

47. Judge Gray’s approach was also intimidating insofar as he asked the same question numerous times. It was as though I had not given the answer he wanted, and so he had to repeat the question in an effort to achieve a desired response. This is not the conduct of a fair and impartial investigator who is searching for the truth, and it gave rise to an apprehension that Judge Gray had a task or a purpose to fulfil and that I was being unhelpful in this regard.

48. At the conclusion of the meeting Judge Gray stressed the urgency of my getting documentation to him, and requested that I do so immediately upon my return to my office after our meeting. In an email that same afternoon (Friday 22 June, 2021) Judge Gray told me:

"I appreciate that you have tried to locate the remaining requested documents and that you will need more time. I indicated at the meeting that the deadline would be COB Monday June 22.

However as I will be finalising my report to the LIV on the morning of Tuesday June 23, I will need to have the remaining documents you wish to rely on by midday Monday- this will enable me to incorporate reference to them.

If appropriate, by the end of the weekend would be preferable."

49. I spent many hours searching for material during Friday night and over the following weekend, delivering the information Judge Gray required within the timeframe he had set for me.

50. At 9.50 am on Monday 21 June, 2021, Judge Gray confirmed that he had all he needed from me:

"Dear Mr Mericka,

Thank you for your email. I advise that I do not require any further information from you.

*Yours sincerely
Ian Gray"*

51. Despite the stress, anxiety and upset the process had generated for me, my family, my staff and my practice, I took some comfort in the knowledge that 30 June, 2021 was the deadline for my discovering not only the basis for the investigation, but also the final outcome.

52. On 30 June, 2021, having heard nothing from Judge Gray, Mr Docherty or Ms McLeay I formed the view that I was being deliberately "kept in the dark" by all in order to create stress and panic on the eve of my Practising Certificate expiring. I emailed Ms McLeay, but also cc'd Judge Gray and Mr Docherty into my email, hoping to prompt some form of response:

"Dear Ms McLeay,

I note that my Practising Certificate expires today, and that the same has not been renewed.

No reasons have been provided to me for the non-renewal of my Practising Certificate.

I believe that, in the circumstances, I will have no alternative but to cease practising as an Australian Legal Practitioner as at Close of Business today."

53. Approximately 3 hours later I received a response from Mr Docherty, with a letter attached. The letter stated as follows:

"Further to our letter dated 27 May 2021 we advise a decision in relation to your recent application for renewal of your practising certificate will not be made prior to 30 June 2021.

We refer you to Rule 17 and in particular Rule 17(2) of the Legal Profession Uniform General Rules 2015 which allows for your 2020-2021 practising certificate to continue in force whilst your subsequent application is being determined.

We confirm that due to the operation of that rule, you will be entitled to continue practising after 30 June 2021.”

54. After all of the urgency associated with my providing a response to Judge Gray’s interrogation, and the providing of material demanded by Judge Gray after our meeting, as well as the silence until the eve of the expiry of my Practising Certificate, I was now being told that the matter had become open-ended but with no reason for this, and still with no explanation or reasons for the withholding of my Practising Certificate.
55. I wanted to let Mr Docherty know how much trouble and upset was being generated by the way I was being treated. I replied to his email, with Judge Gray and Ms McLeay cc’d, as follows:

Dear Mr Docherty,

Unfortunately, your emailed letter arrived too late, and I have had to take steps regarding my Trust Account, State Revenue Office Duties Online Account, PEXA Account and other services that require my holding a Practising Certificate, as well as other issues requiring urgent attention.

As you will appreciate, leaving me just 3 hours to get my affairs in order was never going to work.

I note that I had emailed everyone at 10.30 am this morning after checking the status of my Practising Certificate online, and waiting to see if I would hear anything on this final day. When I had heard nothing by midday I had to act.

I submit that the appropriate way forward from this point is for my practising certificate to be renewed before Close of Business today. You may then take as long as you may require to determine whether or not it should be cancelled.

I am not prepared to put my staff, my family or myself through the stress and misery caused by this matter any longer.

56. Mr Docherty’s response later that afternoon was dismissive of my proposal. He made no attempt at all to justify the delay in finalising the matter, nor did he suggest any timeline for completion:

“Dear Mr Mericka

We received your 10.34am email and we responded in under 3 hours and we are sorry that if, during this period of time it caused you any difficulties. As to your submission as to the way forward, we reiterate the content of our 1.18pm email and confirm that you are able to continue to practice on the basis set out in that email.”

57. On 1 July, 2021 I telephoned Mr Docherty and expressed my concerns to him. The conversation was cordial, and I felt that Mr Docherty was listening to what I was putting to him and that he understood that I was not being treated fairly. The conversation ended with a promise by Mr Docherty that he would call me back that day and provide me with the reasons for my Practising Certificate having been withheld and a date by which the matter would be finalised.
58. At 4.00 p.m. that day Mr Docherty emailed me as follows:

“Dear Peter

I noted in our phone call that I said I would get back to you today, however in order for me to provide the timeline that you’re seeking, I need to seek clarity as to when the Independent Reviewer will have completed the first part of his review. I am hoping to have a better understanding in that regard next week and as soon as I have more information I will advise you.”

59. I was taken by surprise by Mr Docherty’s revelation that what had taken place to date was merely “the first part” of Judge Gray’s review. There had never been any suggestion that the process I was experiencing had been broken down into “parts”, the first of which had yet to be completed. I was also most dissatisfied with the suggestion that I would not have any further update until the following week. I was also concerned that Mr Docherty appeared to have overlooked the main reason for my having telephoned him. I responded to his email, with Judge Gray and Ms McLeay cc’d, as follows:

“Dear Mr Docherty,

Your recollection of our telephone call is not entirely correct.

You will recall that the reason I called you was to follow up on my email of yesterday, which remained unanswered. I repeated my request for the basis on which I have been found to be "unfit" to such an extent that my Practising Certificate should be withheld, as this has never been disclosed to me, and I have never been given an opportunity to address it.

I told you that I had received a Certificate of Fitness in September of last year, and that something must have happened between then and now which gave rise to an apparent prima facie indication that I was not fit and proper. I told you that someone had taken the decision to interfere with the normal Practising Certificate renewal process and that this decision must have been informed by some occurrence, of which I remain unaware.

You were to come back to me this afternoon with details regarding:

- 1. The occurrence that gave rise to the prima facie finding that I am unfit;*
- 2. The bases of my having been found to be prima facie unfit; and*
- 3. The identity of the person whose decision it was that my Practising Certificate should be withheld.*

These three queries are historical and will be on record. I sought to have them disclosed to me, and you indicated that you would respond to this request this afternoon or possibly this evening.

I expect you to provide your response to these three queries today.”

60. Mr Docherty did not respond.

61. At 9.02 am on 2 July, 2021 I followed up on my email to Mr Docherty, with Judge Gray and Ms McLeay cc’d:

“Dear Mr Docherty,

Unfortunately, you did not make good on your promise to respond to my concerns, and your email advising that you will get back to me next week does not help.

I will now take your advice and lodge a formal complaint with the President of the Law Institute of Victoria. I will provide a copy of the same to all parties.

I now demand that the following information be provided to me by midday today:

- 1. The occurrence that gave rise to the prima facie finding that I am unfit;*
- 2. The bases of my having been found to be prima facie unfit; and*
- 3. The identity of the person whose decision it was that my Practising Certificate should be withheld.*

These three queries are historical and will be on record. Alternatively, I seek reasons for this information being withheld from me.”

62. At 10.03 am that morning Mr Docherty replied as follows

“Dear Mr Mericka,

I don’t agree that I said that I would respond to these three queries you have raised. As explained in my earlier email, I indicated that I will come back to you regarding the current process and I propose to do that once I have the clarity I am expecting to receive next week.”

63. I immediately replied to Mr Docherty, with Judge Gray and Ms McLeay cc’d, reiterating my request for reasons behind the withholding of my Practising Certificate:

“Dear Mr Docherty,

We discussed a number of matters during our telephone call, these issues amongst them. However, I am prepared to ask you once again, will you please provide me with the following information by midday today, or state genuine reasons as to why this information is being withheld from me:

- 1. The occurrence that gave rise to the prima facie finding that I am unfit;*
- 2. The bases of my having been found to be prima facie unfit; and*
- 3. The identity of the person whose decision it was that my Practising Certificate should be withheld.*

These three queries are historical and will be on record.”

64. Mr Docherty’s response to my email left me stunned as I read the final sentence:

“It is not my understanding that there has been any prima facie finding as you suggest.”

65. I expressed my outrage in my final email, with Judge Gray and Ms McLeay cc’d:

“Dear Mr Docherty,

This is outrageous!

You say that there has been no prima facie finding that I am "unfit", but for some inexplicable reason my Practising Certificate has been withheld.

I was given no warning that my Practising Certificate would be withheld, and I have been given no reason for its being withheld.

I quote from "Lawyer Discipline" by G. E. Dal Pont,

"It is well recognised that the disciplinary processes arising out of investigation into lawyer misconduct must be conducted according to the standards of procedural fairness. After all, beyond inconvenience and cost, pursuit of a disciplinary investigation can adversely impact a lawyer's professional reputation, and sanctions imposed can constrain or even deny his or her ability to practise. As to the latter, it has been observed that the entitlement to practise law is 'valuable right', and so 'its withdrawal must be accompanied by due process procedures'. It is unsurprising, therefore, that procedural fairness requirements are superimposed on the statutory framework by the general law, and so may extend beyond any statutory requirements."

(I would add that one's health is also to be factored into the abovementioned adverse impact of the pursuit of a disciplinary investigation.)

I have already expressed my apprehension that, having withheld my Practising Certificate, a justification for doing so must now be found so as to prevent my being able to complain about unfair treatment. Hence the commencement of what I would describe as a fishing expedition to find a justification.

I now insist that this fishing expedition be called off, and proper process followed. The proper process is that which I have been at pains to make clear to all concerned:

1. Renew my Practising Certificate forthwith.

2. Refer my extremely serious complaints of corruption and criminal conduct to IBAC with a demand that IBAC should commence an 'own motion' investigation.

3. At the conclusion of IBAC's investigation, commence an investigation into my being a 'fit and proper person' if such an investigation is believed to be warranted.

In the meantime, please provide me with the name and position of the person who ordered the withholding of my Practising Certificate."

66. I received no response from Mr Docherty.

Submissions

I make the following submissions:

67. Mr Docherty has made it quite clear that there has been no *prima facie* finding to the effect that I am not a fit and proper person to hold a Practising Certificate (see above).

68. If Mr Docherty, acting on behalf of the Law Institute of Victoria, has no knowledge of anything that would give a first impression that perhaps I am not fit and proper, then it follows that Ms McLeay has been unable to create such an impression for him. The corollary to this is that Mr Docherty would not have been able to convey any such an impression to Judge Gray.
69. Judge Gray had no basis for a belief or impression that I may not be fit and proper, but he agreed to embark upon an "investigation" nonetheless. This is further confirmed by Judge Gray's failure to acknowledge or to respond to my final statement during his interrogation, where I told him, *"At this stage I still do not know how I am alleged to have failed the 'fit and property person' test, other than it appears to be based on an assertion that the truth of my allegations of corruption is secondary to the manner in which I have exposed the said corruption."*
70. There was ample opportunity for the VLSC to conduct an investigation into my conduct on the basis of a complaint from any staff member I have accused of criminal conduct.
71. There was ample opportunity for the VLSC to commence an own-motion investigation into my conduct on the basis of my having declared that a culture of corruption exists in the office of the VLSC.
72. Had any investigation into my conduct been concluded that my allegations had no basis, the VLSC could have charged me with disciplinary offences and/or withdrawn my Practising Certificate.
73. In September, 2020 the VLSC provided me with a "clean" Certificate of Fitness, when she could have withheld the same and commenced an investigation into my being a fit and proper person.
74. The VLSC has waited until I applied for the renewal of my Practising Certificate and then withheld it without warning, explanation or reason.
75. The VLSC, knowing that her integrity is impugned, has "delegated" authority to the Law Institute of Victoria and sought to have a bogus "investigation" initiated on her behalf.
76. The Law Institute of Victoria has been complicit in the corrupt conduct of the VLSC by accepting her delegation in circumstances where it was known, or ought to have been known, that a conflict of interests arose after I had been approached for information regarding my complaints of criminal and corrupt conduct against the VLSC.
77. The "investigation" undertaken by Judge Gray has no objective basis and is nothing more than a "fishing expedition", the purpose of which is to retrospectively justify the withholding of my Practising Certificate.
78. The "investigation" undertaken by Judge Gray is tainted with bias, the denial of procedural fairness, and the corrupt conduct of the VLSC.
79. The investigation undertaken by Judge Gray is a sham and must be terminated immediately.

Punishment imposed in advance is fundamentally unfair

80. Where a sanction, punishment, deprivation or similar has been visited upon an individual by a regulator without any proper basis a complaint is likely to be made against the regulator.
81. It follows that where a regulator fears that their conduct will be called into question, an attempt will be made to justify the conduct.

82. The need to justify the conduct and to attack the complainant will rise in proportion to the damage the regulator is likely to suffer if their own misconduct is exposed.
83. Where a post-punishment "investigation" is launched by the regulator who imposed the punishment, there is a high likelihood that the "investigation" will be biased in favour of the regulator and will become little more than a "fishing expedition".
84. Where a regulator accused of misconduct seeks to discredit a complainant there is a strategic advantage in pretending to put the "investigation" at arm's length by delegating authority for the "investigation" to a trusted ally, who in turn may appoint a person of his or her choosing and declare the chosen investigator "independent".
85. Where rules of procedural fairness/natural justice are ignored or avoided, injustice will certainly follow.

Proposal for a fair process

86. The "investigation" by Judge Gray should be terminated immediately.
87. My Practising Certificate should be renewed immediately.
88. Judge Gray should be invited to recuse himself, alternatively his appointment should be terminated.
89. Judge Gray should be replaced by a truly independent investigator who is not in any way associated with the Victorian justice system. I would recommend that Professor Gino Dal Pont should be approached and invited to accept this role.
90. Similarly, Mr Peter Docherty should be replaced by someone independent of both the Law Institute of Victoria and the Victorian Legal Services Commissioner, and who is not in any way associated with the Victorian justice system. I would recommend that the former President of the Law Society of Queensland, Mr Bill Potts should be approached and invited to accept this role.
91. The matter should be referred by the Law Institute of Victoria to IBAC for a full investigation into serious criminal and corrupt conduct perpetrated by employees of the Victorian Legal Services Commissioner, and former employees who have been permitted to leave that office, and to take up positions within the Victorian justice system, without their conduct having been investigated.
92. IBAC should be requested by the Law Institute of Victoria to:
 - a. Oversee the new investigation; or
 - b. Take full control of the investigation; or
 - c. Allow the investigation to take place and then commence an own-motion investigation.

A full and value-free investigation into corruption in the office of the Victorian Legal Services Commissioner is long overdue, and it is time for the Law Institute of Victoria to refer this problem to IBAC on behalf of myself, the legal profession and the community at large.

Yours faithfully,



Peter Mericka

I refer to previous emails and advise that the issues/questions I will canvass with you at our meeting on Thursday will be:

The approach you have taken to raising allegations of corruption against the VLSC and Commissioner McLeay - ie, publication on your website;

- The approach I have taken in raising allegations of corruption against the Victorian Legal Services Commissioner is extraordinary.
- I should never have been put in a position where making public disclosures was the only option left to me.
- It was always my preference that government departments, and other legal profession stakeholders would take the initiative to deal with the improper conduct of the VLSC and others.
- I was left with no alternative when all of my attempts to use proper channels were either rebuffed or thwarted.
- My first avenue of redress in relation to corruption issues has always been the Law Institute of Victoria, as my professional association. I approached Mr Michael Brett-Young many years ago, but was told that the LIV could not assist. I have also approached the LIV Ethics Section only to be told that corruption is not an ethical issue within the Section's purview.
- I was recently delighted when I received an unsolicited telephone call from the LIV enquiring about my satisfaction with LIV services. I complained about the lack of interest in my ongoing problems with VLSC corruption and was told that this was exactly the kind of feedback the LIV was seeking.
 - I provided details of the corruption issues, and provided Mr Lynn's details as a person who would corroborate my complaints. I was told that Mr Lynn would be contacted and that the matter would be 'escalated' to a higher ranking officer in the LIV for further attention.
 - Despite follow-up calls and emails, I heard nothing further from the LIV, nor was Mr Lynn ever contacted.
 - It was only recently that I was informed that the LIV had now become the delegate of the VLSC. It was then obvious that my professional association was unable to offer me any assistance.
- If a lawyer's own professional association cannot or will not support or assist, and all other complaint authorities are unwilling to take any meaningful action, a lawyer who seeks assistance in dealing with serious corruption must resort to extraordinary means.

Your reasons for taking that approach;

- I was left with no genuine alternative.
- With regard to the VLSC, I had made every effort to complain to individuals about their misconduct, and then to their supervisors.
- I lodged formal complaints, only to be told that the VLSC is statute-barred from investigating her own staff, and this appears to include conduct that constitutes serious criminal offences.
- I requested that the VLSC refer my complaints to IBAC, but this was refused, despite the VLSC having a legislative duty to report suspected corruption to IBAC.

- A complaint was lodged against the lawyer whose conduct was the catalyst for my being charged with Professional Misconduct, but that complaint was not acted upon. It was never investigated and there was no outcome at all.
- I again approached the Law Institute of Victoria, but was told that no assistance was available.
- My decision to publicise corruption in the office of the VLSC was made after a telephone conversation with Ms Daniella Iacono, the officer who brokered the deal by which \$80,000 in legal costs were waived.
 - During the telephone conversation I said to Ms Iacono something similar to, *“Daniella, do you believe that your office has treated me fairly in all of this?”* Ms Iacono did not want to answer that question. Instead, she told me something similar to, *“I don’t want to deal with the past, I want to look to the future.”*

This was a clear acknowledgement that I had not been treated fairly, but I did not matter.
 - The article on my website regarding Ms Iacono was the first, and I used it to gauge the response of the VLSC. There was no meaningful response, and there was no further communication with the VLSC.
- I was satisfied that so long as I told the truth, and that I could support the truth with admissible evidence, I could make the legal community and the public at large aware that there was a serious cultural corruption problem in the office of the VLSC.
- The VLSC made just a couple of weak attempts to frighten me into removing material from my website, but never initiated an investigation nor sought to challenge allegations I had made other than by way of broad and unsubstantiated denials.
- I have maintained the website as an ongoing repository of proofs and evidence, without any serious challenge from the VLSC. It is important to note that the VLSC has attempted to counter my website by taking similar action in the form of the posting declaring me “vexatious”. The difference between my postings and that of the VLSC is that mine are backed up with evidence, while the VLSC’s is a truly baseless and defamatory retaliatory attack on my reputation.
- The reason I created my website and I maintain it is that it remains the only way that I can continue to ‘blow the whistle’ on corruption in the office of the VLSC in the hope that my whistle blasts will be heard and acted upon.

Your reasons for not referring your corruption allegations to IBAC or the Ombudsman;

- I had previously reported corrupt conduct on the part of the VLSC to the Victorian Ombudsman, and that experience demonstrated to me that the two offices enjoy too close a relationship. Consequently, I have no confidence at all in the office of the Victorian Ombudsman.
- IBAC is extremely limited in its ability to deal with complaints. I was aware that IBAC is under-funded and overwhelmed, and that complaints seem to be ‘triaged’.
- Complaints against police are probably the most serious, and yet these are referred back to Victoria Police for investigation. Former IBAC CEO Mr Alistair Maclean warned that IBAC would struggle to keep meeting community expectations unless the government beefed up its resources. He made the following observation:

“At present, only 2 percent of all complaints about police misconduct, including excessive force, fall within the purview of IBAC, with most allegations referred to Professional Standards Command, where police are investigating their colleagues.”

I believe that if an individual in my position lodges a complaint to IBAC it will be referred to the VLSC for investigation, and the VLSC will simply dismiss it on spurious grounds. Once this happens the matter cannot be re-opened

- IBAC’s website states, under the heading *“What happens to your complaint?”* that two of the options open to IBAC are:
 1. Refer your complaint to another agency (which in my case would be the VLSC); or
 2. Take no further action. The decision to take no further action may be based on:
 - a. There is not enough information to assess the complaint; or
 - b. The alleged corruption is more than a year old and there isn’t a valid reason for the delay; or
 - c. The complaint has already been investigated by another agency and there is no new evidence; or
 - d. The complaint is trivial or vexatious.

Any one of these options could be used to defeat my complaints, either by further misconduct on the part of the VLSC (e.g. falsely claiming a prior investigation has revealed NOD, withholding information/evidence as ‘privileged’ or declaring the complaint is ‘vexatious’ - as the VLSC has already done without any basis). Or, by IBAC deciding that there is not enough information, or that the misconduct is more than 12 months old.

- IBAC has a further power of investigation, being the ‘Own Motion Investigation’.

According to the IBAC website, although IBAC has certain options regarding the disposing of complaints, *“...matters are also brought to IBAC’s attention in other ways...”* One of these ways is through social media, which would include my website. IBAC’s website further states, *“IBAC can start an ‘own motion’ investigation at any time, in relation to any matter that falls within its jurisdiction.”*

It was my hope and expectation that I could ensure that IBAC would commence an ‘own motion’ investigation if I could bring corruption matters to IBAC’s attention through my website and social media.

The purpose of my website is to present a full description of the corrupt and criminal conduct perpetrated by officers of the VLSC, with links to various documents and supporting evidence such that it would not be possible for IBAC to ignore it. I expect that, in time, my website, social media postings and publications of articles describing the corrupt conduct of VLSC officers will generate sufficient interest for IBAC to launch an own motion investigation or that a ‘champion’ (as described in the 1st paragraph of my article *“Blowing the Whistle on Civil Servants – Is It Worth the Risk?”*) would take the matter to IBAC.

Whether you believe your approach would be considered by lawyers of good repute to be acceptable;

- Einstein said, *“Those who have the privilege to know have the duty to act”* This was quoted to me yesterday by Mr Bill Potts, a former President of the Queensland Law Society when I told him about this investigation (see below).

- There are some more directly relevant observations made by IBAC Commissioner, Mr Robert Redlich in an address to the Law Institute of Victoria Government Lawyers conference that I wish to draw to your attention:

Discussing common behaviours that characterise misconduct and corruption, Mr Redlich said they included an organisational culture of denial, obfuscation and concealment, and a failure of those in positions of management and supervision *“to be as forthcoming as they should be about misconduct”*.

Regarding public exposure of wrongdoing Mr Redlich said,

“Managers are too often complicit in whatever sort of coverage or hiding of what occurred...They don’t express a willingness to publicly expose what has occurred within their organisation.”

Mr Redlich also stated that support should be given to those who are in a position to speak out *“and make sure they get the full protection of the law in relation to being courageous”*.

I believe that the abovementioned obligations are incumbent, not only on government lawyers, but all lawyers, including me. I believe that all lawyers of good repute would see my approach as embodying the expectations described above.

- I believe that most lawyers would consider a willingness to *publicly expose* improper conduct within the office of the VLSC to be not only acceptable, but a positive duty, in line with the Einstein quotation above.
- I also believe that most lawyers of good repute would be horrified to know that the VLSC can pillory a lawyer on its own website by naming and shaming that lawyer as “vexatious” without any complaint having been lodged, without any investigation having been undertaken, without the lawyer being given any opportunity to answer such a reputation destroying assertion, and without the lawyer even being notified of the publication. Compare this conduct with my own – I always invited the individual accused of corruption to respond to my allegations, and in most cases I have first given them the opportunity to become a whistle-blower.
- I believe that lawyers of good repute would be comforted to know that one amongst them was courageous enough to confront a VLSC that would engage in the type of corrupt conduct I have described on my website and to make it public so as to warn other lawyers.
- My beliefs were confirmed yesterday during a telephone conversation with Mr Bill Potts, a former President of the Queensland Law Society. Mr Potts informed me that he has often sat on tribunals to determine whether a lawyer may or may not be a ‘fit and proper’ person.

Mr Potts confirmed to me that, in the circumstances described (where attempts to have action taken by regulators and authorities in relation to corruption had come to nought) that I had a positive duty to, as Mr Redlich described it, *“...to publicly expose what has occurred within (the) organisation”*.

- Mr Potts stated that he would be pleased to discuss with the investigator his understanding of the views of the legal profession regarding the approach I have taken, and his own view that they were not only acceptable but mandatory. Mr Potts can be contacted by telephone on **0488999984**.

Whether you believe your approach would be considered acceptable by reasonable and fair-minded members of the general community;

- I believe that, similar to members of the legal profession as discussed above, members of the general community would hope and expect that there are some legal practitioners who have the courage to call out corruption by any and all means available to them.
- I also believe that members of the general public are less interested in the means by which corruption is exposed, and more interested in the fact that it is exposed.
- I believe that, like members of the legal profession, reasonable and fair-minded members of the general community would applaud my actions and encourage me to continue the use of my website and social media, as Mr Robert Redlich put it, “...to publicly expose what has occurred...”
- On Wednesday night a person whom I have never previously met connected with me on LinkedIn, and we commenced chatting. This gave me the opportunity to test and confirm that my belief corresponds with that of an average reasonable and fair-minded person.
- The person I chatted with is Mr Davin Eastley, and he indicated a willingness to discuss his views with the investigator. Mr. Eastley’s telephone number is **0458090649**.

What you believe are the appropriate actions for practicing lawyers to take when they wish to raise corruption or misconduct allegations in Victoria, including allegations against the VLSB;

- I have explained above the reasons why I am relying on my website and social media to expose corruption in the office of the VLSC.
- I have also explained that my actions are the only options left to me.
- I believe that the most appropriate actions for practicing lawyers to take when they wish to raise corruption issues or misconduct allegations in Victoria are those that I have taken. That is, to move through the available options until they are exhausted. Publication is most definitely one of the steps available.
- I believe the appropriate actions are:
 - Where appropriate, question the conduct with the person concerned.
 - If no satisfaction, raise the matter with the person’s immediate supervisor.
 - If no satisfaction, raise the matter with the head of the department.
 - If no satisfaction, raise the matter with the Law Institute of Victoria and request assistance in the lodging of a formal complaint with the department concerned.
 - If no satisfaction, raise the matter with an external regulator or authority.
 - If no satisfaction, expose the conduct publicly to draw attention to the need for it to be addressed.
 - If no satisfaction after a reasonable period of time, seek the assistance of a local Member of Parliament and refer the MP to published material and supporting evidence.
 - If no satisfaction, consider whatever other options may still be available.

Why you consider yourself a “fit and proper person” to have your Practicing Certificate renewed; see section 45(2) of the Legal Profession Uniform Law (Victoria)

I refer to the above explanations as evidence of my integrity, courage and commitment to the legal profession and to the general community.

Whether you consider yourself a lawyer of “good fame and character”; see rule 13(1)(a) of the Legal Profession Uniform Rules 2015;

I do.

Other issues that arise, or you wish to raise, that are relevant to a consideration of the “fit and proper person” test as applied to your application.

1. This is the third time my practising certificate has been withheld.
2. I was not notified that any allegations of my not being ‘fit and proper’ had been raised, or by whom they had been raised.
3. At this stage I still do not know how I am alleged to have failed the “fit and proper person” test, other than it appears to be based on an assertion that the truth of my allegations of corruption is secondary to the manner in which I have exposed the said corruption.
4. It has never been put to me that my allegations are false. Instead, the VLSC has done what I am apparently accused of having done – she has published a false allegation that my complaints are baseless and vexatious when there were alternative means of dealing with such matters. I submit that a broad denial of corruption is not the same as a refutation, nor is a broad assertion the same as evidence.
5. I submit that you should find that I am indeed a fit and proper person, and a person of good fame and character, and that you should recommend that my practising certificate should be renewed forthwith.
6. I further submit that you should recommend that the Law Institute of Victoria should approach IBAC with a view to opening an ‘own motion’ investigation into the corrupt conduct I have exposed.