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15 October 2013

The Hon. Robert Clark MP
Attorney-General Victoria
Level 121 Exhibition Street
Melbourne 3000

Dear Attorney General,

Re: Corruption Complaint Regarding the Chief Justice of the Supreme Court of Victoria

1. Request for Investigation Under Constitution Act 1975 s87AAD

I refer to the attached letter, written to me on behalf of my local member, Mr. David Hodgett MP. I and draw your attention to paragraph three which indicates that I cannot expect to receive a formal response to my previous correspondence unless I write to you *"referencing the original correspondence and request a formal response"*.

I now do the following:

1. Enclosures. I enclose a copy of my original letter of complaint, together with a copy of a more recent letter to the President of the Law Institute of Victoria for your information.
2. Request for Action. I make the following formal request for action on your part:

In my capacities as a corruption whistleblower, a victim of corrupt conduct, a legal practitioner and an officer of the Supreme Court of Victoria, I request that you appoint an investigating committee pursuant to Section 87AAD of the *Constitution Act 1975* on the basis that there are reasonable grounds for the carrying out of an investigation into whether facts exist that could amount to proved misbehavior on the part of the Chief Justice of the Supreme Court of Victoria such as to warrant her removal from office.

2. Reasons for Request

I now set out my account of the events on which I base my request for the appointment of an investigating committee.

Complaint to Chief Justice Warren

On 29 May, 2012 I wrote a letter of complaint to Chief Justice Marilyn Warren in her capacity as Chief Justice of the Supreme Court of Victoria regarding Justice Michael Sifris and his hearing and determining the matter of *Dr. Claire Noone, Director of Consumer Affairs Victoria v Peter Mericka & Ors* [2012] VSC 101. The complaint was to the effect that the judge allowed his court to be used for the purpose of "laundering" corrupt conduct, and thereby giving this conduct a veneer of legitimacy.

Grounds for Complaint to Chief Justice Warren

My complaint to Chief Justice Warren was prompted by a blackmail attempt by Mr. Blair Ussher, General Counsel, Consumer Affairs Victoria on behalf of Dr. Claire Noone. Mr Ussher's attempted blackmail involved a threat to initiate proceedings for a charge of Contempt of Court against me. I had hoped to prevent further injustice being done to me, by seeking the disqualification of Sifris J. from hearing the contempt of court charge.

I attached to my letter to Chief Justice Warren copies of correspondence I had written to various parties in recent years as background to my complaint. Each of these referred to the problem of ongoing corruption regarding Consumer Affairs Victoria.

It was my expectation that Chief Justice Warren would gain some insight into the toxic relationship that had developed between myself and Consumer Affairs Victoria over the years, and realise that the matter heard by Sifris J. was much more than a routine enforcement matter brought before the Supreme Court for determination. It was also my expectation that Chief Justice Warren would seek further information from me in order to develop a full understanding of circumstances leading to the very unusual and very difficult decision I had made in bringing the issue of "corruption laundering" to her attention.

Acknowledgement of Complaint to Chief Justice Warren

On 15 June 2012, two weeks after I had made my complaint to Chief Justice Warren I received an email from Ms. Vivienne Macgillivray, on behalf of Chief Justice Warren. This email said: "*On behalf of the Chief Justice I acknowledge receipt of your letter of 29 May 2012 and advise that it is receiving consideration.*" This intimated to me that my complaint and request for the disqualification of Sifris J. was actually receiving attention and that I would be requested to provide further information on specific aspects in due course.

Delay in Replying by Chief Justice Warren

By the end of June, 2012 I was becoming concerned that there had been no follow up and no further communication from Chief Justice Warren. I assumed, though, that this was because she was conducting preliminary investigations and perhaps seeking a response from officers of Consumer Affairs Victoria and The Hon. Bruce Atkinson MLC about the matters I had raised.

By the middle of August 2012, more than 10 weeks after making the complaint to Chief Justice Warren, I still had not received any communication from the Chief Justice. I became concerned at the delay. One of the major reasons for my concern was as follows. I had assumed that the Chief Justice was considering my complaint. I assumed that in order to consider the complaint the Chief Justice would request further information from me that could sustain the complaint. Since I had already furnished the Chief Justice with background information to the complaint I was expecting that the Chief Justice would request me to inform her of foreground information by way of facts and evidence.

Because of my concern at not having had a response I took action. On 15 August 2012 I telephoned the Supreme Court of Victoria and spoke to a person I now believe to have been Ms. Macgillivray. As soon as I mentioned my letter and the fact that I had received no response to it, this person said, *"I have the Chief Justice's reply here on my desk, it arrived this afternoon."* I asked Ms. Macgillivray to read the contents of the letter to me, but she told me that I would have to wait until I had received the letter and I could read it for myself.

Reply from Chief Justice Warren

The letter arrived at my office the next day, 16 August 2012. It was dated 15 August, 2012. (I later discovered that the day after this letter was sent to me Chief Justice Warren sent another letter to Mr. Michael McGarvie – a former colleague of Chief Justice Warren having previously served as CEO of the Supreme Court – in his capacity as Legal Services Commissioner, intimating that he could bring disciplinary proceedings against me. This will be discussed further below.

Chief Justice Warren's letter (signed on behalf of Chief Justice Warren by Ms. McGillivray) consisted of only three sentences,

"On behalf of the Chief Justice I acknowledge receipt of your letter of 29 May, 2012. The letter and documents have been considered. The Chief Justice does not propose that any further action be taken with respect to the matters you raise concerning the Hon. Justice Sifris."

Upon reading the reply from Chief Justice Warren I formed the view that something was seriously wrong with manner in which the matter had been handled. My complaint had been dismissed out of hand without any further information having been sought from me. I was also aware that the charge of Contempt of Court, threatened by Mr. Blair Ussher in writing and then followed up by an angry and threatening telephone call to my lawyer, had miraculously failed to materialise.

Letter to Chief Justice Warren

I felt offended and confused by the way in which Chief Justice Warren had dealt with the matter. I wondered whether she was unaware of my letter; I thought perhaps some officer in the court had taken it upon himself or herself to deal with the matter without bringing it to the attention of Chief Justice Warren, and had not expected me to follow up.

I decided to write again to Chief Justice Warren, and to do so in such a way that Ms. Macgillivray would be forced to bring the matter to Chief Justice Warren's attention if she had not already done so. On 19 August, 2012 I wrote to Chief Justice Warren as follows:

"You have acknowledged having received my letter of 29 May, 2012, and having given it consideration over a period of two and half months.

I note that the substance of my complaint is not denied, nor is there any explanation for the conduct of the Hon. Justice Sifris in allowing corrupt conduct to be laundered through his court.

As you are now aware, the matter dealt with by the Hon. Justice Sifris was brought in reprisal for my having made a formal complaint to the Minister for Consumer Affairs regarding corrupt conduct.

As a direct result of this corrupt conduct having been laundered through the Supreme Court my personal reputation and community standing have been severely damaged. In such circumstances, I believe that I am entitled to know the reason for your not taking any further action in respect of the matters raised in the correspondence presented to you.

I wish to have this letter placed on record as a formal complaint regarding the laundering of corrupt conduct through the Supreme Court of Victoria."

Reply from Chief Justice Warren

I received a reply from Chief Justice Warren (signed by Ms. Macgillivray) dated 23 August, 2012:

"Your correspondence of 19 August, 2012 is acknowledged. The serious allegations contained in your letter are emphatically denied. Any concerns you may have with respect to your proceeding before the Supreme Court may be pursued by way of avenues of appeal. This is a matter entirely for you.

Kindly note that no further correspondence will be entered into with respect to this matter."

Comments on the Reply from Chief Justice Warren

I make the following comments on this reply by Chief Justice Warren:

1. The Chief Justice says: *'The serious allegations contained in your letter are emphatically denied.'* The Chief Justice can deny the *'serious allegations'* only if she has properly investigated them and found them to be not true. In a letter of 16 August 2012 the Executive Associate of the Chief Justice, Ms. Vivienne Macgillivray, wrote to the Legal Services Commissioner, Mr. Michael McGarvie on behalf of the Chief Justice. That letter said in part: *'The matter has been considered by her Honour and it is proposed that no action be taken.'* This letter makes it clear that the Chief Justice has *'considered'* the matter. Yet that consideration did not include asking me to furnish foreground material to explain the basis of my allegations against Sifris J. Since the Chief Justice at no stage requested me to provide information to back up these allegations it is impossible for her to reach a rationally based conclusion that they are not true.
2. The Chief Justice says: *'Kindly note that no further correspondence will be entered into with respect to this matter.'* In effect, this is telling me: *'Even if you have facts and evidence that might lead to a different outcome I do not want to be informed of them'.*

Letter to Chief Justice Warren

I was now convinced that there was something seriously wrong with the way in which Chief Justice Warren was handling this matter. On 30 August, 2012 I wrote again to Chief Justice Warren, advising her *inter alia* that I had lost confidence in the ability of the Supreme Court to fairly and impartially deal with the matter, concluding that her off-handed dismissal of my complaint and her veiled warning against my making *"serious allegations"* were the first stages of what is colloquially known as a cover up. I received no response from Chief Justice Warren, and there has been no further correspondence or communication between myself and the Supreme Court since.

Chief Justice Warren's Letter to the Legal Services Commissioner

On 16 August 2012, the day that Chief Justice Warren replied to my initial letter of complaint she also had her Executive Associate, Ms. Vivienne Macgillivray, write to the Legal Services Commissioner, Mr. Michael McGarvie. The body of this letter said as follows:

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

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

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

This letter is intimating that the Commission may want to consider disciplinary proceedings against me.

There are four problems with this letter:

1. Defective Consideration. As was stated above, the Chief Justice's consideration of the matter was defective, as she had not asked me to disclose any relevant facts or evidence of which I might be aware. If the Chief Justice was chary about investigating the allegations herself there was an obvious course of action. That was to refer it to some outside authority to investigate the matter thoroughly and to advise.
2. Deceitful Towards the Legal Services Commission. When the letter says that *'[t]he matter has been considered by her Honour'* it would suggest to any legally trained reader that this consideration involved considering all the evidence and facts, and that to this end the Chief Justice had asked me to explain the basis for my complaint. In truth, I had not been asked to explain the basis for my complaint.
3. Totally Perfect Judiciary. The letter says: *'[T]he letter raises concerns in that a member of the legal profession has made remarks of that nature against a judge of the court'*. The implication here is that all judges of the Victorian Supreme Court are incapable of misconduct, which of course is fatuous.
4. Right to Petition the Crown. The right of a subject to petition the Crown for redress of personal grievances has probably been exercised since Saxon times. It was recognised in Magna Carta, in the statute *Rotuli Parliamentorum 1406* (7 & 8 Hen IV No 63). It was enacted in the *Bill of Rights 1689* (1 Wm & Mar ch 2, Session 2). The statute declared: *'That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal'*. Any attempt to bring disciplinary proceedings against me is contrary to this provision. Due to constitutional developments that took place after 1689 the Crown is represented in current government structures as the Crown in parliament, the Crown's ministers in the executive arm of government and the Crown's judges.

Response of the Legal Services Commissioner

The Legal Services Commissioner did not act immediately. It took a further three months before the Legal Services Commissioner contacted me. In a letter to me dated 16 November, 2012, Mr. McGarvie referred to *"issues identified"* in Chief Justice Warren's letter of 16 August, 2012. However, the only issue mentioned in Chief Justice Warren's letter was that my letter to her *"raises concerns in that a member of the legal profession has made remarks of that nature against a judge of the Court."*

It appears that Mr. McGarvie quite readily took his cue from Chief Justice Warren. The *"concerns"* or *"issues"* raised were not to be regarded as concerns about corruption laundering, the conduct of Sifris J., or the threatening of criminal charges as a vehicle for blackmail. Instead, they were to be regarded only as relating to the fact that a lawyer had made a serious complaint, and the decision by the Chief Justice that *"no further action be taken with respect to the matters"* was to be conclusive evidence of that lawyer's breach of professional standards.

Comment on the Response of the Legal Services Commissioner

Chief Justice Warren had no grounds whatsoever for reporting the matter to the Legal Services Commissioner. Instead, upon her receiving my letter of 29 May 2012 Chief Justice Warren should have responded in one of the following ways:

1. Carry out a thorough and objective preliminary investigation into the matters I had raised to determine the merits of my complaint. This would obviously have needed to include further input from me; or
2. Have some other competent authority conduct the preliminary investigation; and
3. If the investigation suggested wrong doing by anyone then refer the matter to the appropriate authorities, for example refer it to Parliament for an investigation pursuant to Section 87AAD of the *Constitution Act 1975*.

Flaws in Proceedings by the Legal Services Commissioner

There are several flaws in the proceedings against me by the Legal Services Commissioner:

1. The failure of the Chief Justice to investigate my complaint against Sifris J has consequences for proceedings against me by the Legal Services Commission. The Chief Justice *'considered'* my complaint but did so without calling on me to give reasons for my complaint about Sifris J. This dismissal of my complaint was the start of a chain of action that led to the Legal Services Commissioner initiating an "own motion" disciplinary investigation against me. It is extraordinary that a judge of a superior court could claim to have considered my complaint without making a proper investigation. This leaves open the possibility that the purpose of referring the matter to the Legal Services Commission was to smear my reputation because I had sought the disqualification of Sifris J. and alerted the Chief Justice to corruption laundering, and also to cover up the serious defect in the Chief Justice's handling of my complaint. This amounts to acting for an improper purpose, tainting subsequent proceedings with this flaw from this time on.
2. The Chief Justice has raised a nonsensical ground for an investigation of my conduct by the Legal Services Commissioner. This ground is that a *'a member of the legal profession has made remarks of that nature [viz that a judge has allowed his court to be a vehicle for laundering corrupt conduct] against a judge of the court'*. This can be a ground for discipline only if there is an irrebuttable presumption in law that no judge would ever err in their handling of a case.
3. Any attempt to bring disciplinary proceedings against me is contrary to the provision in the Bill of Rights that confers a right to petition the Crown. The provision also says that *'all commitments and prosecutions for such petitioning are illegal'*. Given that courts construe statutes in a manner that favours liberty it is not hard to treat disciplinary proceedings against a legal practitioner as a 'prosecution'.

Contempt of Court Proceedings Abandoned

I also draw attention to the fact that the Director of Consumer Affairs Victoria, having so forcefully threatened to initiate Contempt of Court proceedings against me, has not carried out this threat. It is my belief that my letter to Chief Justice Warren and the subsequent failure of the Director of Consumer Affairs Victoria to initiate contempt proceedings are related.

Further Information

So that you are fully informed of matters, I also advise that:

- I was recently informed by Mr. Michael Brett-Young, CEO of the Law Institute of Victoria, that this matter has been referred to the Executive of the Law Institute of Victoria and a response to my letter of 11 September, 2013 will not be available until after the Law Institute Council meeting on 17 October, 2013. Given previous experiences with the Law Institute of Victoria committee system of decision-making, I expect that the matter will be adjourned at least once, and possibly more, for further consideration at future committee meetings. I do not expect to receive a response to my letter for some months.
- Formal complaints have been lodged with IBAC concerning the behaviour of the Chief Justice, the Director of Consumer Affairs Victoria and the Legal Services Commissioner. I am in process of preparing a "Corruption Timeline" of events from 9 May, 2002 to the present in electronic form, with hyperlinks to various correspondence and documents to assist IBAC with its investigations. It is my intention to request that my complaints to IBAC be suspended until such time as a decision regarding an investigation pursuant to Section 87AAD of the *Constitution Act* 1975 has been made by your office, and further suspended until the outcome of any investigation is known. This request will be made on the basis that an investigating committee appointed by the Attorney General is unlikely to be as constrained as IBAC in its investigative powers and the latter should therefore await the outcome of an investigation conducted by the former.
- In a recent letter from the Freedom of Information Officer, Justice Department, I was informed that access to documents I regard as crucial for the proper investigation of my corruption complaint has been refused. As part of my application for a review of this decision I will be submitting this letter and the attached correspondence.
- At the urging of the Chief Justice, the Legal Services Commissioner has initiated a bogus "own-motion" investigation into my writing to the Chief Justice. The obvious and inevitable outcome of this investigation is that I will be forced to answer an equally bogus allegation of professional misconduct. Part of my complaint against the Legal Services Commissioner is that the true purpose of his "own-motion" investigation is to assist the Chief Justice in covering up her misconduct.
- In defending any charges brought against me by the Legal Services Commissioner I will be drawing attention to the fact that none of my complaints over the past decade have ever been investigated, my complaint to the Chief Justice has never been investigated and that the efforts of the Chief Justice in belatedly involving the Legal Services Commissioner in the matter should be viewed as part of a cover-up, not only of the Chief Justice's misconduct, but also of the corrupt behaviour of a host of parties that have aligned themselves with Consumer Affairs Victoria over the past decade.

I look forward to your early response.

Yours faithfully,

Peter Mericka