



MEDIA RELEASE

For immediate release

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Outcome of investigation into complaint about Magistrate Richard Pithouse

In accordance with the *Judicial Commission of Victoria Act 2016* (the **Act**) the Judicial Commission of Victoria (the **Commission**) has considered a range of allegations arising from a number of separate matters concerning the alleged conduct of Magistrate Richard Pithouse (the **Officer**).

After careful deliberation, allegations arising from three separate matters have been referred to the Head of Jurisdiction, Her Honour Chief Magistrate Lisa Hannan

1. comments made by the Officer during VOCAT proceedings in October 2018 and a subsequent “tweet” sent by the Officer in relation to that proceeding;
2. failure to stop and report a motor vehicle accident in September 2017; and
3. comments made about a victim of family violence during a bail hearing in November 2017.

The Commission found the Officer’s conduct “infringed the standards generally expected of a judicial officer” and in relation to one matter “brought the office of Magistrate into disrepute”. The Commission made a number of recommendations about the future conduct of the Officer.

The remaining allegations have been dismissed on the grounds they could not be substantiated. The nature and number of these allegations – many of which dated back several years – required careful consideration and enough time to gather relevant information. The Officer was also given an opportunity to respond to all allegations as they arose.

Outcome – allegation one

The Commission found the Officer made several improper statements in October 2018 towards a victim of crime in relation to a claim for compensation arising out of a serious sexual assault. The Officer commented that:

- a) “*intoxication is not an excuse for the purposes of the Tribunal*”;
- b) the victim “*put herself in that position*”;
- c) “*there is an old adage that you can’t profit from you own malfeasance*”; and
- d) the Officer responded to counsel’s statement that the victim called a sexual assault crisis line the following morning saying it was “*buyer’s remorse*”.

In summary, the Commission found that:

- to an objective observer, the Officer’s comments (a & b) could reasonably be construed as victim-blaming in that the Officer considered that the applicant bore some responsibility for the rape because she was so intoxicated, she was unable to consent. This in turn reinforces misconceptions about sexual offending, including that victims of sexual offences ‘ask for it’ by consuming too much alcohol;

- further that whether or not the Officer held this view personally (the Officer denied it was his own view), it does not lessen the impact to not only the victim in that matter, but all victims, members of the legal profession and the public who became aware of it;
- the Officer's comment (c) was inappropriate, insensitive and gratuitous and should not have been made. The comment indicates the Officer had a closed mind and was not impartial;
- the Officer's comment (d) was highly inappropriate and insensitive and to a reasonable observer, the comment would be construed as the Officer speculating the applicant had not been raped, but rather consented to sexual intercourse and then regretted it the next day;
- the Officer's conduct infringed the standards of conduct expected of judicial officers.

The Commission also found that in April 2019 the Officer sent a tweet, later deleted, which read:

"It's the same situation when the legal representatives in a VOCAT matter don't bother preparing a case by reading the police material which necessitates even further delay for alleged victim. People who live in glass houses...."

While the Officer did not name the proceeding, he copied in the accounts of the relevant counsel and a media outlet.

The Commission found it was highly inappropriate for the Officer to publicly criticise someone who had appeared before him in a matter by using social media and that the Officer's conduct infringed the standards of conduct expected of judicial officers.

Outcome – allegation two

The Commission found the Officer's conduct in September 2017 in failing to stop at the site of a road traffic accident where property damage had occurred and to immediately report it:

- was not a momentary lapse in judgement but a conscious decision to continue driving;
- displayed an element of moral turpitude and failed to respect and observe the law;
- diminished public confidence in the Officer's judicial character and brought the office of Magistrate into disrepute;
- infringed the standards of conduct expected of judicial officers.

Outcome – allegation three

The Commission found the Officer made inappropriate comments to a victim of domestic violence during a bail application by the accused. The Officer expressed frustration the accused had been bailed. In relation to the victim not having made a statement in regards to the incident, the Officer responded: "*Well, it's her right to get beaten up if she wants to, I suppose, but, yes, go on*" and "*she won't make statements, she won't make complaints, what am I to do?*"

In summary, the Commission found that:

- the Officer's comments were inappropriate and insensitive;
- to an objective observer, the comments appear to blame the victim for the accused's behaviour; and
- the Officer's conduct infringed the standards of conduct expected of judicial officers.

Recommendations

The Commission made several recommendations in relation to the future conduct of the Officer, namely that he:

- be counselled by the head of jurisdiction in appropriate judicial conduct including the need to exercise sensitivity, courtesy and respect in the courtroom towards all court users, including victims of crime;
- be directed to undertake necessary coaching and mentoring as the head of jurisdiction considers appropriate, including peer supervision;
- be directed to engage in such judicial education programs as the head of jurisdiction considers appropriate including, but not limited to, engaging in programs offered by the Judicial College of Victoria with a focus on the experiences of victims of crime, including victims of sexual assault and family violence, and programs focusing on courtroom management;
- be counselled by the head of jurisdiction regarding the Commission's finding that the Officer infringed the standards expected of judicial officers and brought the office of Magistrate into disrepute by his conduct in failing to stop and to report the motor vehicle accident in September 2017.

As required under the Act, the Commission has informed the complainants, the Attorney-General as a referrer, the Officer and the relevant head of jurisdiction, Her Honour Chief Magistrate Lisa Hannan, of its decisions.

As also required under the Act, the head of jurisdiction must report back to the Commission on the outcome of the referral to her and the reasons for that outcome.

Background

The Commission has the power to consider a range of complaints including excessive delays in giving judgments, inappropriate courtroom conduct and health issues affecting a judicial officer or VCAT member's ability to perform their official duties.

Any member of the public or the legal profession can make a complaint to the Commission. Once the Commission has considered the complaint or referral, it can take one of the following courses of action:

- i. dismiss the complaint or referral (for example those that are trivial, vexatious, relate to a person who is no longer a judicial officer or VCAT member, or relate solely to the correctness of a decision);
- ii. if it is a serious complaint about conduct, make a finding that the conduct infringed the standards of conduct expected of judicial officers and refer it to the relevant head of jurisdiction, with recommendations in relation to future conduct; or
- iii. if it is a very serious complaint which if true, warrants removal from office on grounds of misbehaviour or incapacity, refer it to an investigating panel for a full investigation.

The Commission does not have the power to remove a judicial officer from their position. A special majority of both Houses of Parliament must agree before a judicial officer can be removed.

The governing body of the Commission is its Board. The Board consists of six judicial Board members and four Board members appointed by the Governor in Council.

Contact:

Judicial Commission of Victoria

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