

4 March 2024

Statement

COMPLAINT INVESTIGATION OUTCOME

On 23 May 2023, the Judicial Commission of Victoria (the **Commission**) received a complaint about the Honourable Lex Lasry (the **Officer**) from the Solicitor for Public Prosecutions, Abbey Hogan (the **SPP**).

The complaint related to an alleged failure by the Officer to uphold the standards of conduct generally expected of judicial officers in *DPP v Tuteru* (S ECR 2021 0188 & S ECR 2022 0024). The proceedings concerned manslaughter charges and offences arising under the *Heavy Vehicle National Law* (Victoria).

Under the *Judicial Commission of Victoria Act 2016* (the **Act**), any person, which includes any member of the legal profession, can make a complaint to the Commission, about the conduct or capacity of a judicial officer.¹

Complaint details

On 28 October 2022, a Crown Prosecutor informed the Officer that the Director of Public Prosecutions (the **DPP**) had determined to discontinue the manslaughter charges against the accused.

On 13 February 2023, the Officer heard an application for a permanent stay of the heavy vehicle charges.

On 3 March 2023, the Officer granted a permanent stay of the heavy vehicle charges against the accused (the **Decision**).

On 10 March 2023, the DPP gave notice of her intention to seek leave to appeal against the Decision.

The complaint made by the DPP to the Commission on 23 May 2023 related to:

- (a) statements in Court by the Officer on 28 October 2022 and 13 February 2023 criticising the DPP for declining to give reasons for discontinuing the manslaughter charges; and
- (b) statements in the Officer's reasons for the Decision on 3 March 2023 criticising the DPP, including a statement that the continuation of the manslaughter charges, before their discontinuance, constituted a glaring and oppressive misuse of the Court process.

The complaint alleged that the Officer's comments amounted to an attack on the professional integrity of the DPP and those acting for and advising the DPP in making significant decisions about the conduct of a criminal prosecution and had "the real tendency to diminish public

¹ Section 5 of the Act. In addition, under section 6, the Law Institute and Victorian Bar may make complaints on behalf of members, and are not required to disclose the identity of the person on whose behalf a complaint is made.

confidence in the administration of justice in Victoria [and] the confidence of litigants and the public in general in his Honour's integrity and impartiality."

On 7 June 2023 the appeal against the permanent stay was heard. The investigation of the complaint was put on hold until the determination of the appeal.²

On 17 August 2023 the appeal was determined in *DPP v Tuteru* [2023] VSCA 188. The investigation resumed.

The complaint was about whether the Officer's criticisms of the DPP on 28 October 2022 and 13 February 2023, and in his reasons for the Decision on 3 March 2023, fell outside the standards of conduct generally expected of judicial officers. The complaint was not about, and the Commission did not consider, the merits or lawfulness of the Decision.

The Commission considered relevant parts of the video recordings, transcripts and rulings in the proceedings.³

On 11 December 2023, the Commission determined to provide the Officer with an opportunity to respond to the complaint.⁴ The purpose of an opportunity to respond is to allow an officer to 'provide his or her perspective' on a complaint. The response, if any, is considered by the Commission, as part of this information-gathering stage of the investigation.

On 5 February 2024, on his return from leave, the Officer was notified of the complaint and provided the opportunity to respond.⁵

On 14 February 2024, the Officer announced in open court his intention to resign. Among other things, the Officer said he "utterly rejected" allegations that he had made statements in court or in his ruling that had the tendency to diminish public confidence in the administration of justice in Victoria or the confidence of litigants and the public in his impartiality and independence.

Complaint outcome

On 26 February 2024, the Commission was notified of the Officer's resignation as a reserve judge of the Supreme Court, with effect from midnight 1 March 2024.⁶

Section 16(3)(e) of the Act provides that the Commission *must* dismiss a complaint if the officer concerned has resigned or retired and is no longer a judicial officer. Accordingly, the Commission has dismissed the complaint under that provision.

As a consequence, the investigation of the complaint was not concluded and no findings were made in relation to any of the allegations contained in the complaint.

For media enquiries, the Commission can be contacted at media@judicialcommission.vic.gov.au

² Section 31 of the Act provides that the Commission may adjourn an investigation if the matter is the subject of a current legal proceeding or for any other appropriate reason.

³ Section 28 of the Act.

⁴ Sections 13(3), 13(2) and 14(1) of the Act.

⁵ Where a matter is not dismissed, section 14(2) of the Act provides for the timing of notice to an officer of a complaint. Written notice that a complaint has been made against an officer must be given at the time the Commission provides the officer with an opportunity to respond.

⁶ Section 12 of the Act provides that the fact a complaint has been made or is made against a judicial officer who is conducting a proceeding does not, of itself, require the officer concerned to disqualify themselves from the proceeding.