



Statement

6 May 2024

OUTCOME OF INVESTIGATION INTO COMPLAINT ABOUT HIS HONOUR JUDGE CHETTLÉ

On 16 June 2023, the Judicial Commission of Victoria (the **Commission**) received a complaint about His Honour Judge Chettle (the **Officer**) from the Solicitor for Public Prosecutions, Abbey Hogan (the **SPP**).

Summary of findings

The Commission found, overall, that the Officer's conduct infringed the standards of conduct generally expected of judicial officers because, in part:

- there was a reasonable basis to believe, through a combination of emails that were sent from the Officer's chambers only to prosecution lawyers and a telephone conversation between the Officer and the prosecutor in the case before him, that the Officer was attempting (although did not intend) to convene a hearing that the defendants' lawyers would not be required to attend. Of itself, the creation of that belief had the potential to undermine public confidence in the impartiality of the courts; and
- during a pre-trial hearing, the Officer used language about the complainant (who was not present) that was pejorative, demeaning and incongruous. The Officer's use of that language lacked the sensitivity expected of judicial officers presiding in sexual offence matters, tended to cause offence, and was gratuitous.

Further details about the findings and analysis are set out below.

The proceedings

The complaint related to two proceedings for co-accused charged with offences including rape and sexual assault.

On 2 February 2023, the Officer presided over a pre-trial hearing in the proceedings. The complainant was not present in the courtroom at this time. During argument about the scope of cross-examination of the complainant that would be permitted, the Officer made comments about the complainant which are the subject of **Part B** of the complaint.

On 3 February 2023, eleven emails were exchanged between the Officer's chambers and prosecution lawyers. The defence was not copied into the first five emails from chambers. On the same day, the Officer spoke about the proceedings on the telephone with the trial prosecutor. The defendants' lawyers were not included on the telephone call. The emails and telephone conversation are the subject of **Part A** of the complaint.

On 7 February 2023, the Officer presided over a hearing in the proceedings. At the hearing, the Officer acknowledged that certain emails had not been copied to both parties.

On 16 February 2023, the Officer heard and refused the prosecution's application for his disqualification for ostensible bias.

On 17 February 2023, the Officer heard and granted an application for a permanent stay of the Proceedings. The DPP appealed that decision to the Court of Appeal.

On 18 August 2023, the Court of Appeal granted leave to appeal, allowed the appeal and set aside the permanent stay order. The issues in the complaint were not matters that were raised in the appeal and were therefore not dealt with by the Court of Appeal.

Investigation of the complaint

In accordance with the *Judicial Commission of Victoria Act 2016 (Vic)* (the **Act**), the Commission investigated the complaint. As part of the investigation, the Commission listened to recordings, and read transcripts and reasons for decision relating to the proceedings.

On 23 November 2023, the Officer was notified of the complaint and provided with an opportunity to respond to the complaint.¹

On 14 February 2024, the Officer provided a response, which was considered by the Commission.

The Commission's findings and assessment

The complaint made by the SPP to the Commission on 16 June 2023 alleged that:

- The Officer by engaging in email correspondence and a telephone call with the prosecution only, sought to convene a hearing that the defence lawyers would not be required to attend, in an attempt to persuade the prosecution to discontinue the Proceedings (**Part A**).
- The Officer made three in-court comments using demeaning and pejorative language in respect of the complainant. The comments were made during argument about the ambit of defence cross-examination of the complainant (**Part B**).

The Commission assessed the Officer's actions, comments, the impact of the conduct, and the Officer's response to the complaint.

Part A of the Complaint

Officer's response

The Officer, in his response, 'totally reject[ed]' and described as 'factually inaccurate' the suggestion that he sought to convene a hearing that the defence would not be required to attend, in an attempt to discontinue the proceedings. The Officer said he never intended to meet with the prosecution in the absence of the defence.

¹ 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.

The Officer acknowledged that it was ‘unfortunate and regrettable’ that emails sent from his chambers to the prosecution on 3 February 2023 were not copied to the defence, but said that nothing was being concealed from the defence. The Officer also noted that he had clarified the matter in court on 7 February 2023.

The Officer acknowledged discussing aspects of the proceedings with the trial prosecutor and recalled parts of their conversation. The Officer, in his response, said that he was trying to get a prosecutor to address matters of concern to him about the proceedings, and outlined the questions he wanted a prosecutor to answer.

Findings and assessment

The Commission was satisfied on the basis of the Officer’s response (among other things) that:

- the failure to copy the defence lawyers into certain emails was unintentional;
- the Officer did not have a general practice of checking or reviewing email correspondence sent from his chambers;
- the telephone call between the Officer and the trial prosecutor was unorthodox and should have been avoided;
- however, the content of the conversation did not of itself disclose that the Officer inappropriately persuaded the prosecution to acquiesce to any particular view of the proceedings or course of action; and
- therefore, the content of the conversation did not ‘cross the line’ dividing candid disclosure of matters of concern to the Officer about the prosecution’s approach to its case from inappropriate judicial intervention.²

Overall, however, the Commission found that the Officer’s conduct in relation to Part A of the Complaint infringed the standards of conduct generally expected of judicial officers because:

- although the Commission was satisfied that the Officer did not intend to convene a hearing in the absence of the defence lawyers with only the prosecution lawyers attending,
- there was a reasonable basis to believe, through a combination of the emails and the Officer’s telephone conversation, that the Officer was attempting to convene a hearing that the defence would not be required to attend. Of itself, the creation of that belief had the potential to undermine public confidence in the impartiality of the courts.

Part B of the complaint

Officer’s response

The Officer, in his response, acknowledged there were robust conversations in court about evidence, but said:

- such conversations occur on a daily basis;

² *Chow v DPP* (1992) 28 NSWLR 593, 606.

- the complainant was not present in court, and no comments were directed at her; and
- there was no discourtesy, lack of respect, or causing embarrassment to the complainant.

The Officer accepted ‘absolutely’ that his use of one particular pejorative word to describe the complainant was unnecessary, and apologised to the complainant for using that word.

However, the Officer rejected the characterisation of his remarks as ‘comments’, describing them variously as a ‘blunt and brutal’ summation, a discussion, an encapsulation, and evidentiary facts.

Findings and assessment

Overall, the Commission found that the Officer used language, albeit in the absence of the complainant, which infringed the standards of conduct generally expected of judicial officers because two (out of three) comments:

- were pejorative, demeaning and incongruous with the sensitivity expected of judicial officers presiding in sexual offence matters;
- whether or not characterised as “comments”, contained language which tended to cause offence; and
- were gratuitous to the legitimate purpose of having robust discussions about evidentiary issues in pre-trial proceedings.

Outcome of the complaint

The Commission referred **Part A** and **Part B** of the complaint to the Chief Judge as head of jurisdiction with the following recommendations as to the Officer’s future conduct:

- (a) The Officer be counselled by the head of jurisdiction, as the head of jurisdiction sees fit, concerning appropriate judicial conduct, including:
 - i. adequately directing or supervising the work of chamber’s staff;
 - ii. the importance of judicial officers not engaging in private conversations with lawyers for only one of the parties about proceedings over which they are presiding; and
 - iii. the need to exercise sensitivity, courtesy and respect in the courtroom, particularly in sexual offence proceedings.
- (b) Read and/or familiarise himself with relevant resources.

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