

Statement

27 March 2024

OUTCOME OF INVESTIGATION INTO TWO COMPLAINTS ABOUT INTERVENTION ORDER PROCEEDINGS

The Judicial Commission of Victoria (the **Commission**) received two separate complaints about the conduct of an Officer in proceedings concerning applications for intervention orders.

In relation to each complaint, the Commission found that the Officer's conduct was inconsistent with the professionalism, respect and courtesy judicial officers are expected to show towards court users.

Investigation of the complaints

In accordance with the *Judicial Commission of Victoria Act 2016* (the **Act**), the Commission investigated the complaints. As part of its investigation, the Commission listened to the audio recordings of the proceedings and gave the Officer an opportunity to respond to the complaints. The Officer gave detailed written responses.

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

The Commission's findings and assessment

First complaint

The first complaint, made by the applicant in the proceeding, alleged that the Officer made inappropriate, upsetting and rude comments towards them. Relevantly, the proceeding involved an allegation of sexual assault.

Officer's response

In response, the Officer apologised for the impact of his conduct and emphasised that he believed what the complainant told him during the proceeding.

The Officer stated that, in relation to some of his comments, he was trying to make the complainant aware of the potential unintended consequences of the court granting an intervention order.

Findings and assessment

The Commission found that the Officer's conduct was inconsistent with the professionalism, respect and courtesy judicial officers are expected to show towards court users, particularly in an intervention order proceeding involving sexual assault allegations. The Officer:

- used the expression 'don't poke the bear'. This could suggest that a person in the complainant's position should be fearful of the respondent's reaction to the intervention order application.
- made blunt, casual and frequent references to the sexual assault allegation.

- used the expression ‘be careful what you wish for’. This could be regarded as indifferent and insensitive towards the complainant’s circumstances.

The Commission also found that:

- the Officer’s colloquial and informal language – sometimes blunt in tone – was unnecessary to explain the intervention order process or hear the application.
- the Officer’s conduct was incongruous with the extremely sensitive and personal subject matter and could be perceived by a reasonable community member as insensitive to–
 - the impact of sexual violence on an individual;
 - the complainant’s evident distress; and
 - the complainant’s confusion about the court process.

By contrast, the Commission identified some aspects of the Officer’s conduct during the proceeding demonstrating a model approach to judicial conduct. In particular, the Officer:

- acknowledged the complainant’s autonomy and right to continue with the application.
- asked the complainant whether she needed time to seek legal advice and explained that the application could be brought at a later time.

Second complaint

The second complaint, made by Louise Glanville, CEO of Victoria Legal Aid, concerned a special mention in the Specialist Family Violence Court. It alleged that the Officer engaged in overbearing conduct and did not treat the parties with dignity and respect. It also alleged that the Officer did not adopt a trauma-informed approach when interacting with the parties, which was inconsistent with expectations about how the Specialist Family Violence Court should operate.

Officer’s response

In response, the Officer addressed his language, tone of voice, method of questioning, and interruption of the parties during the proceeding. The Officer apologised for his conduct and pointed to the stress of complex proceedings, unrepresented litigants, WebEx hearings and broader workplace pressures. The Officer also emphasised his strong track record of resolving intervention order proceedings at special mention hearings.

Findings and assessment

The Commission found that the Officer’s conduct was inconsistent with the professionalism, respect and courtesy judicial officers are expected to show towards court users, particularly in the family violence jurisdiction. It found that a reasonable observer would regard aspects of the Officer’s conduct as:

- inconsistent with the decorum and formality generally expected of court proceedings.
- contributing to a perception that the parties and the proceedings were not being taken seriously.
- incongruous with the court user’s evident stress and anxiety.

The Commission found that the Officer frequently used colloquial and informal language during the hearing, which was inappropriate. For example, the Officer:

- invited the parties to make submissions by using the analogy of asking for presents from Santa Claus.
- asked each party, casually, if they had been to gaol.
- referred to parties potentially being 'lunatics' or 'stupid' and used a basketball metaphor to refer to intervention order matters.

The Commission also found that:

- generally, but not always, the Officer's tone was abrupt and impatient.
- overall, a reasonable community member would interpret the conduct as disrespectful and belittling.
- the Officer's conduct towards one of the parties was overbearing and did not allow the party an adequate opportunity to speak or give evidence.

Outcome of the complaints

The Commission separately referred each complaint to the Chief Magistrate (as head of jurisdiction) with recommendations as to the Officer's future conduct, including:

- The head of jurisdiction counsels the Officer as to appropriate judicial conduct, particularly in proceedings involving allegations of sexual assault, family violence matters and matters involving intervention order applications.
- In relation to managing judicial stress, the Officer be directed to engage with the Judicial Officers Assistance Program as needed and read and/or refamiliarise himself with relevant resources. That program provides support to Victorian judicial officers in managing challenges and opportunities relating to their psychological wellbeing.
- In relation to the family violence jurisdiction and virtual hearings, the Officer be directed to read and/or refamiliarise himself with relevant resources.

To learn more about the Commission, visit <http://www.judicialcommission.vic.gov.au>.

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