

8 October 2024

OUTCOME OF INVESTIGATION INTO COMPLAINT ABOUT HIS HONOUR MAGISTRATE MAXTED

The Judicial Commission of Victoria (the **Commission**) received a complaint about the conduct of His Honour Magistrate Maxted (the **Officer**) in a family violence intervention order proceeding at the Magistrates' Court of Victoria. The complaint was made by a legal practitioner (the **Complainant**).

The Commission found that the Officer's conduct was inconsistent with the professionalism, respect, patience, and sensitivity judicial officers are expected to show towards court users.

The complaint

The affected family member and the respondent spoke a Southeast Asian language and required an interpreter for the proceeding. They both attended the mention hearing in person. The Complainant appeared as Duty Lawyer for the respondent.

An interpreter was connected by telephone when the hearing commenced, but left a few minutes later due to the expiration of the booking.

After the interpreter had left the hearing, the complaint alleged that the Officer mimicked the interpreter's accent.

Investigation of the complaint

In accordance with the *Judicial Commission of Victoria Act 2016* (the **Act**), the Commission investigated the complaint. As part of the investigation, the Commission listened to the audio recording of the proceeding and gave the Officer an opportunity to respond to the complaint. The Officer responded to the complaint.

The Commission's findings and assessment

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

Officer's response

In response, the Officer denied that he intended to mimic or offend the interpreter. The Officer acknowledged that in a momentary lapse of judgement he 'unintentionally mirrored and echoed the interpreter's statement'. He explained his 'total shock' at the interpreter disconnecting from the hearing, and the disruption of that 'unexpected departure from the interpreter standards'.

The Officer clarified that his comment was not ‘towards’ the interpreter, but rather to representatives at the bar table. He acknowledged repeating ‘the nature of the interpreter’s words and style of abrupt exit from the court ... to emphasise her actual departure’.

The Officer referred to procedural, time, and workload pressures under which magistrates perform their duties and noted that the matter was listed late on a ‘long and difficult day’. The Officer noted that he showed considerable concern for the affected family member and the respondent, given their need to fully comprehend the terms of the intervention order.

The Officer apologised generally for any concern his conduct caused to anyone and expressed a commitment to preventing similar incidents.

Findings and assessment

The Commission acknowledged that the Officer was faced with a difficult and unanticipated issue when the interpreter left part-way through the hearing. However, any need to emphasise certain matters did not justify the Officer drawing attention to the interpreter’s accent.

The Commission was satisfied that a reasonable community member would perceive the Officer as intentionally mimicking the interpreter’s accent on two occasions, albeit briefly and without meaning to offend the interpreter. Although it did not occur in the interpreter’s presence, the Officer’s conduct was such that a reasonable person would regard it as showing insensitivity and disrespect towards the interpreter.

The Commission was satisfied that a reasonable observer of the Proceeding would consider that the Officer in mimicking the interpreter’s accent:

- (a) drew unnecessary attention to the fact the interpreter spoke with an accent;
- (b) portrayed a culturally insensitive stereotype associated with people of Asian descent speaking English as a foreign language; and
- (c) created the impression that members of the stereotyped group may not be afforded equal consideration and respect before the court.

Outcome

Overall, the Commission found that the Officer’s conduct was inconsistent with the professionalism, respect, patience, and sensitivity judicial officers are expected to show towards court users.

The Commission referred the complaint to the Chief Magistrate (as head of jurisdiction) with the following recommendations as to the Officer’s future conduct:

- The head of jurisdiction counsels the Officer as to appropriate judicial conduct, including:
 - i. the importance of avoiding stereotypes and efforts that can be made to proactively recognise, demonstrate sensitivity to and correct stereotypes.
 - ii. the need to show professionalism, respect, patience, and sensitivity towards court users, despite difficult issues arising unexpectedly during hearings.