

11 October 2024

DISMISSAL OF INVESTIGATION INTO COMPLAINT ABOUT MEMBER CROCKER *MODEL JUDICIAL CONDUCT*

The Judicial Commission of Victoria (the **Commission**) received a complaint about the conduct of Member Crocker (the **Officer**) in residential tenancies proceedings at the Victorian Civil and Administrative Tribunal (**VCAT**).

The Commission dismissed the complaint on the basis that it was satisfied that it had not been substantiated. In doing so, the Commission identified conduct by the Officer that was:

- consistent with a model approach to engaging with self-represented litigants; and
- exemplary of the duty to ensure a fair hearing for all parties.¹

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 proceedings.

The Commission's findings and assessment

The complainant and her husband (the **applicants**) applied to VCAT for an order restraining the real estate agent from exercising a right of entry under the *Residential Tenancies Act 1997* (Vic) (the **application**). They were self-represented.

The hearing was conducted by telephone.

The complaint contained two parts, alleging that the Officer:

- Part A – intentionally provoked the applicants; and
- Part B – spoke to the applicants in a rude, impolite, disrespectful, and unprofessional tone.

The complaint broadly alleged that the Officer had engaged in differential treatment favouring the respondents.

Dismissal of the complaint

During the hearing, the complainant's husband frequently spoke over and interrupted the Officer. The Commission found that a reasonable observer would experience the Complainant's husband's voice as persistently loud.

¹ See *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 97, 98, 100, 102 (*'VCAT Act'*).

On several occasions, the Officer calmly and politely asked the Complainant's husband to stop speaking over her, and to speak to her with respect. In particular, the Officer asked the Complainant's husband not to 'yell over' her – and a few minutes later, to 'please stop shouting at [her]'.

The Complainant agreed that her husband had a loud voice, but disagreed that he was shouting. The Officer explained that while shouting may be open to interpretation, she considered that the Complainant's husband was shouting at her.

On a few occasions, the Officer interrupted the applicants to obtain more precise or additional information. There was nothing inappropriate about the interruptions, and some may have reflected the inherent limitations of telephone hearings. Rather, this was appropriate as part of the Officer's case management role to ensure the efficient and effective use of tribunal time and resources.²

The Officer also made efforts to assist the applicants to identify the relevant legal issues, consistent with the duty to provide higher levels of assistance to self-represented litigants who are unfamiliar with tribunal proceedings.³ Towards the end of the hearing, the Officer allowed the Complainant's husband to make submissions for around eight minutes without interruption.

The Commission noted that telephone hearings can present additional difficulties for tribunal members and parties alike, in limiting their ability to respond to non-verbal cues. The Commission acknowledged that the applicants were second-language English speakers.

The Commission was satisfied, however, that there was no basis for a reasonable community member to consider that the Officer had provoked the applicants, or spoken to them in a rude, impolite, disrespectful, and/or unprofessional tone.

While the Officer challenged and ultimately rejected many of the applicants' submissions, there was no evidence that she had engaged in differential treatment or otherwise infringed the standards of conduct generally expected of non-judicial members of VCAT.

Rather, the Officer conducted the proceedings in a measured and professional manner, maintaining protocol and decorum despite frequent and loud interruptions by the Complainant's husband, and the limitations of telephone hearings.

Outcome of the complaint

The Commission dismissed both parts of the complaint under section 13(2)(c) of the Act on the ground that section 16(4)(a) of the Act applied. Section 16(4)(a) states that the Commission may dismiss a complaint if it is satisfied the complaint has not been substantiated.

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

For all media enquiries, the Commission can be contacted on (03) 9084 9600 or through email at enquiries@judicialcommission.vic.gov.au.

² VCAT Act s 98(1)(d).

³ VCAT, Practice Note PNVCAT3, *Fair Hearing Obligation*, 8 December 2022, para 17.