

Office of the Legal Services Commissioner
OCBC Building, 75 Castlereagh Street
Sydney, NSW 2000

File: 56561_3

10th of March 2019

DISPUTE OF THE COMMISSIONER'S DECISION

Dear Commissioner,

Thank you for the letter dated 1st of March 2019.

As advised in it, I would like to point out several issues that deserve further attention.

My wish, as it has always been the case, is to avoid litigation and costly court cases.

It is easy to take private legal action against the lawyer for professional negligence but that is not my primary goal unless necessary.

At this point in time, the Police politely asked (not issued subpoena) Solicitor Adrian Mueller for the eight emails as evidence in investigation for what is claimed to be false Statutory Declaration to CTTT and later used at the District Court (this is an indictable offence, especially since Solicitor Adrian Mueller failed to provide evidence of him being legally engaged for six months). Would any legal representative with good reputation and competency silently decline the Police request especially when a group of Executive Committee members, strata managers, and the Solicitor himself were listed as persons-of-interest in the report of fraud and financial mismanagement to the Police? The answer is obvious: no.

The purpose of disciplinary action by Office of the Legal Services Commissioner is to protect the public, correct the professional conduct, and ensure that breaches do not occur again especially now when I am in the final stages of serious investigations with the Fair Trading NSW and the Police.

Attorney-General Greg Smith (2011-2014), who tabled the Law Society's report in parliament, said it was important that lawyers were held to account.

Ambiguity about preliminary assessment

In the opening statement (numerated OLSC letter, line 1), the preliminary assessment of my complaint was confirmed.

In the closing statement (numerated OLSC letter, line 160), the decision appeared final, in spite of no evidence to disprove any of my claims or question validity of submitted files.

- Cambridge English Dictionary defines preliminary as:

coming before a more important action or event, especially introducing or preparing for it

- English Oxford Living Dictionaries define preliminary as:

preceding or done in preparation for something fuller or more important

- Merriam-Webster Dictionary defines preliminary as:

coming before and usually forming a necessary prelude to something else

Based on those reputable and authoritative resources on the English language, it is rightfully expected that the decision made on 1st of March 2019 is not final and does not exclude other reviews.

Question of uniformity of decisions in my two complaints against Solicitor Adrian Mueller

In decision made on 31st of May 2013 (file 41366_2), Office of the Legal Services Commissioner never discarded my complaint based on me “not being the Solicitor’s client”. Rather, in spite of confirming my complaints, it simply concluded that:

- CTTT would make final decision (which did not happen in proper manner due to alleged forged evidence),
- Owners corporation never complained about Solicitor’s actions and invoices (again proven to be due to owners not even having information and Solicitor not being engaged legally).

In decision dated 1st of March 2019 (file 56561_3), the main reason for dismissing my complaints was not the lack of evidence, in spite of no facts that could counter my claims, but the allegations that I was “not Mr. Mueller’s client” - numerated OLSC letter, line 81, 117, and 118.

I question the non-uniform approach to the two complaints by Office of the Legal Services Commissioner and sudden “not a client” approach. Is this a double-standard?

It also raised the question of discriminatory behaviour against me.

Definition of a client

- Strata Community Australia definition of owners corporation:

An owners corporation is the legal entity that combines all the lot owners in a strata scheme. Owners corporations (also called strata corporations, corporations, body corporates and strata companies, depending on the state or territory) are automatically created when a plan of subdivision contains common property.

The corporation raises funds by levying contributions against all lot owners. The amount that each lot owner contributes to maintenance funds is calculated according to the “lot entitlement” accompanying the strata plan.

- New South Wales Consolidated Acts states:

“client” includes a person to whom or for whom legal services are provided;

- US Legal definition:

A client generally means a person, including a public officer, corporation, association or other organization or entity, either public or private, who is rendered services by a service provider, or who consults a service provider with an intention of obtaining services from him/her.

- The Free Dictionary definition:

CLIENT, practice. One who employs and retains an attorney or counsellor to manage or defend a suit or action in which he is a party, or to advise him about some legal matters.

It is very clear and unambiguous that all owners in strata plan SP52948, including myself, are part of owners corporation. I am a client of Solicitor Adrian Mueller because owners corporation is my legal entity and part of my levies are directly used to pay for his alleged services.

Based on the above, I find the decision of me not being a “client” weak and groundless.

Solicitor's duty of care to non-client

Carey v Freehills [2013] FCA 954 - Justice Kenny summarised the law in relation to the circumstances in which a solicitor will be found to have a duty of care to a person who has not retained him or her. Some examples:

In Hill v van Erp at 167, Brennan CJ said:

Generally speaking... a solicitor's duty is owed solely to the client subject to the rules and standards of the profession. That is because the solicitor's duty is to exercise professional knowledge and skill in the lawful protection and advancement of the client's interests in the transaction in which the solicitor is retained and that duty cannot be tempered by the existence of a duty to any third person whose interests in the transactions are not coincident with the interests of the client.

...

There are, however, circumstances in which a duty of care on the part of a solicitor may arise independently of a retainer. Thus, a duty of care has been said to arise in the context of negligent misstatement causing loss: see Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 and Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 188 CLR 241, at 252 (Brennan CJ).

Office of the Legal Services Commissioner wrongfully assumes that my interests differ from their so-called "client's interests". On the contrary. I want to prevent and fight against:

- Financial mismanagement of the complex,
- Unnecessary litigations that benefit only a Solicitor and a selective group of owners (discriminating majority of other owners),
- Fraudulent insurance claims for non-existent CTTT case,
- Lower insurance costs by decreasing risks of litigations and illegal activities,
- Full transparency in the management of the complex, including full financial statements before the general meetings,
- Full fire safety compliance,
- Full OH&S compliance,
- Tender for major renovations and works,
- Full compliance with NSW and Federal laws.
- Physical safety of all owners,
- Equal rights for all owners, irrelevant of their race, sex, nationality, and other attributes.

I challenge the office of the Legal Services Commissioner to prove that my interests differ from those of the "client" (fully understanding that interests of few EC members and the strata manager are not sufficient for the whole owners corporation).

Office of the Legal Services Commissioner can accept anonymous complaints

According to OLSC's own FAQ, the Legal Services Commissioner may accept an anonymous complaint, if the complaint raises a serious matter and there is sufficient information in the complaint to assist him to conduct an investigation.

It is understood that it may be difficult to resolve or investigate an anonymous complaint if one does not provide the contact details or further information is required from them.

This raises a very important question: if a serious matter is raised by an anonymous complaint, how would Office of the Legal Services Commissioner make a decision whether the issue is a disciplinary matter or a consumer matter.

Disciplinary Matter versus Consumer Matter

Office of the Legal Services Commissioner stated that my case was disciplinary matter complaint (numerated OLSC letter, line 81).

This is disputed on the grounds that I am part of the owners corporation, provide some of the funds paying for legal services, hence I am one of the clients of Solicitor Adrian Mueller.

The other element of the dispute is that I represented, through email authorisations, proxy votes, and ballot papers at general meetings, other owners in the complex.

Office of the Legal Services Commissioner wrongly assumes that I acted for myself only.

In this specific case (referring to file 56561_3), my priority are the disciplinary matters.

Who is really an authorised person by the client in SP52948

The statement that I was “not a client of Mr. Mueller and not an authorised person of the client” - numerated OLSC letter, 117 and 118) has serious weakness and it is easy to refute it because the “client” is actually not legally valid as follows:

- To be an authorised person of the client (owners corporation), an owner must be financial before the general meeting. Strata Schemes Management Act (SSMA) 2015, Schedule 2, c9(4) states: voting rights cannot be exercised if contributions not paid - member of the strata committee is not entitled to vote on any motion put or proposed to be put to the strata committee if the member was, or was nominated as a member by a member who was, an unfinancial owner of a lot in the strata scheme at the date notice of the meeting was given and the amounts owed by the unfinancial owner were not paid before the meeting.
- It has been proven by me, beyond ANY doubt, that SP52948 has not had legally compliant meetings or quorum for the last 22 years. That especially applies to a group of owners who secretly obtained personal benefits from common funds or failed to pay full levies but continued to sit on the Executive Committee. My evidence is overwhelming and just needs to be read without bias.
- Each member of the strata committee, and every lot owner, need to be notified of an intended strata committee meeting at least 3 days before the meeting is due to be held. The notice of the meeting must include a detailed agenda for the meeting. During 2017 and 2018 alone, six EC meetings failed to comply with this SSMA 2015, Schedule 2, Part 2, c4(1) requirement:

Lot 158 and number of other owners did not receive agenda from strata agency seven days before the Annual General Meeting on 24th October 2017 (failure to comply with SSMA 2015, Schedule 1, c7 (2)).

Lot 158 and number of other owners did not receive agenda from strata agency three days before the EC meetings held on 30th of June 2017 which allegedly approved Liftronics contract without evidence of tender (failure to comply with SSMA 2015, Schedule 2, c4 (1)).

Lot 158 and number of other owners did not receive agenda from strata agency three days before the EC meetings held on 15th February 2018 (failure to comply with SSMA 2015, Schedule 2, c4 (1)).

Lot 158 and number of other owners did not receive agenda from strata agency three days before the EC meetings held on 12th April 2018. (failure to comply with SSMA 2015, Schedule 2, c4 (1)).

Lot 158 and number of other owners did not receive agenda from strata agency three days before the EC meetings held on 13th September 2018. (failure to comply with SSMA 2015, Schedule 2, c4 (1)).

Lot 158 and number of other owners did not receive minutes from strata agency for EC meetings held on 15th February 2018 and 12th April 2018. (failure to comply with SSMA 2015, Schedule 2, c4 (1)).

As not all owners received agenda (with full details) for the meetings, their natural right to be able to oppose motions was denied. SSMA 2015, Schedule 2, Part 2, c9(3):

A decision of a strata committee has no force or effect if, before the decision is made, notice is given to the secretary of the owners corporation by one or more owners, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners.

- Number of notices and minutes of the Executive Committee meetings were deliberately not displayed for owners on notice boards (SSMA 2015, Schedule 2, Part 2, c4(2)). That is another piece of information that cannot be disputed.
- Disclosure of pecuniary interest: if a strata committee member has a monetary or other interest that could raise a conflict of interest in relation to matter to be considered by the committee, this interest must be disclosed at a meeting of the committee. After a member has made this disclosure they must not be present when the particular matter is discussed and they cannot vote on the matter unless the committee resolves otherwise (SSMA 2015, Schedule 2, Part 2, c18). Details about the potential conflict of interest needs to be recorded. That has not happened in SP52948.

Based on the above facts, I was/am automatically a member of the Executive Committee and therefore have more than right to be an "official client" as per OLSC's jargon (several other EC members are still unfinancial).

Number of current and previous EC members are not valid members of the committee, so they cannot represent owners corporation and cannot make decisions on their behalf.

Legal Services Commissioner may initiate a complaint about a solicitor on their own motion

FAQ at Office of the Legal Services Commissioner clearly defines a process where the Legal Services Commissioner (LSC) may initiate a complaint about a solicitor or a barrister on their own motion, as a result of receiving information relating to the conduct by a lawyer from any source that may be capable of amounting to unsatisfactory professional conduct or professional misconduct, including a member of the public.

Solicitor Adrian Mueller failed to acknowledge that a contract for his engagement had to be valid

Over the last seven years, Solicitor Adrian Mueller was well informed and had received numerous pieces of evidence that SP52948 did not have valid Executive Committee and that their decisions were not made with valid quorum, as per SSMA 1996 and 2015.

Failing to know that a contract for his engagement had to be valid is negligent to the extent that disciplinary action can and should be taken due to repetitive nature of his involvement.

Lawyers are an integral part of the administration of justice in legal system - they must at all times act within the law and uphold the law when engaging in their occupation

I am not an expert, but believe these to be truth:

- Section 192E of the Crimes Act 1900 states that a person who, by any deception, dishonestly obtains property belonging to another, or obtains any financial advantage or causes any financial disadvantage, is guilty of the offence of fraud, with maximum penalty of imprisonment for 10 years.
- Section 316 of the Crimes Act 1900 (NSW) makes the knowing concealment of information relating to a "serious indictable offence" a crime punishable by up to 2 years imprisonment.

Section 4 of that Act defines "serious indictable offence" to mean an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. Subject to certain exclusions this generally includes the fraud offences in Part 4AA of that Act as well as stealing and similar offences in Part 4.

Section 316(1) states if a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.

- There is currently no maximum elapsed time period for indictable offences in NSW.

Solicitor Adrian Mueller misled the court and abused the court processes

It was proven beyond reasonable doubt that Solicitor Adrian Mueller failed to comply with CTTT orders to provide evidence three times at Direction Hearings in 2012.

It was proven beyond reasonable doubt that Solicitor Adrian Mueller continued to delay CTTT proceedings in spite of persistent requests to provide evidence of his legal engagement for six months (until 19th of April 2013).

It was proven beyond reasonable doubt that in all periods since 2012, Solicitor Adrian Mueller worked against client by merely protecting own interests and interests of a group of selected Executive Committee members of which some had/have not been legal to represent owners corporation.

With knowledge that his contract was NOT signed on the date as listed in Statutory Declaration to CTTT on 19th of April 2013, Solicitor Adrian Mueller continued to misrepresent the owners corporation to this day (including the District Court mediation in February 2014).

This constitutes repetitive, premeditated, orchestrated efforts to:

- Mislead the Court,
- Abuse the Court's processes (continuing with court proceeding found to be wrongly conceived).

Office of the Legal Services Commissioner does not deny Solicitor Adrian Mueller provided instructions to exclude/deny Lot 158 Motions at meetings

In the statement (numerated OLSC letter, line 135 to line 139), it is said that it was up to strata committee to accept or refuse Solicitor's advice on Lot 158 Motions at general meetings in 2016, 2017, and 2018.

That statement has no reasonable ground and must be refuted by me.

- Solicitor must not provide a statement which they know to be untrue,
- Solicitor must act with honesty, integrity and candour,
- Solicitor must correct any statement made subsequently discovered to be wrong,
- Solicitor must avoid conflicts of interest,
- Solicitor must avoid any compromise to their integrity and professional independence,
- Solicitor must act in a client's best interests. By "client" it is certainly not meant to only include selective Executive Committee members (who are not even financial to be on the committee or vote), or the strata manager who won contracts without tenders.

We are dealing with the Solicitor's conduct, not the strata committee, so the Solicitor's advice that influenced SP52948 strata committee to make decisions in belief that was the best option was misleading, misconstrued, and with deliberate intention to protect Adrian Mueller's own interests.

Office of the Legal Services Commissioner has been approached to deal with the Solicitor's performance, and not offer the conditional statements about duties or responsibilities of the strata committee.

Solicitor's Duty of Care - foreseeability

A duty of care arises where it is reasonable to expect that my wife and me might be injured or harmed if they act or behave with a lack of care. This is called foreseeability.

Office of the Legal Services Commissioner is well aware that due to my actions, seven Police events, including stalking, intimidation, bullying, an even religious prosecution occurred, Solicitor Adrian Mueller is fully notified of them. One of the events even included statements by a long-serving EC member (who still owes close to \$5,000.00 in unpaid levies and 10% simple interest applies per year) that my wife and me were "non-believers" (whatever it meant).

Just during 2018, these events occurred:

- Police Event E244254697 on 26th March 2018, which ended with my wife being taken to emergency due to fear of stalking and intimidation with blood pressure 218/109 (she had two mild strokes 12 years ago and any stress can literally kill her – she is even excused from Jury duty due to multiple medical conditions),
- Police Event E69860959 on 26th of October 2018, with another attempt to stalk, bully, and intimidate my wife,
- Police Event E265804296 on 14th of November 2019, attempt to intimidate and threaten even myself whilst collecting information about OH&S and smoking in the complex.

If Office of the Legal Services Commissioner wants full details of the Police Events, they can easily be provided.

Office of the Legal Services Commissioner delaying inevitable actions

Office of the Legal Services Commissioner (numerated OLSC letter, line 119 to line 122, and line 153 to line 155), state that the strata committee and the Police are welcome to submit complaints or inquiries to them office directly.

The Police was already notified.

There is wealth of submitted evidence when the Hon Matthew Kean, MP, Minister for Innovation and Better Regulation ordered Fair Trading NSW investigation about SP52948 affairs on 3rd of October 2017 (still pending outcome), and the Police Event 65804633.

Office of the Legal Services Commissioner (numerated OLSC letter, line 124 to line 126), use conditional statement that:

even if it could be established that Mr Mueller has inadvertently misplaced or lost the documents in question, it was unlikely that an administrative error such as this would in itself result in disciplinary action by this Office.

I find this statement very dangerous as an attempt to be dismissive without reasonable grounds. I need to state the following: on the day of your letter being sent to me (1st of March 2019), the following was received in one of the emails from strata agency (current strata manager for SP52948 who won the contract without tender and got three contract value increases without owners corporation decision at any legally convened and conducted meeting in last two years since they came to power on 1st of February 2017):

Due to a recent computer issue we are currently having to re-enter a large volume of financial records into our database. This process is going to take approximately 2 weeks. During this period I am having to manage and assist additional staff we have brought in to speed up the process. I may therefore be slow to respond to many emails but will be regularly checking emails and attending to urgent matters as soon as possible. I apologise for any inconvenience that may be caused during this period.

Question: should we consider this to be a coincidence, conspiracy, or something else?

Had Solicitor Adrian Mueller really lost those files (for whatever reason), he would still be guilty as per Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, under the Legal Profession Uniform Law, 14.1.2, and would notify both the Police and the owners corporation about such an event.

Solicitors must follow strict rules in the maintenance of client files. Office of the Legal Services Commissioner should be well aware of it and not look for dismissing it as a simple once-off matter.

There is nothing speculative to suggest that Solicitor Adrian Mueller has deliberately destroyed the emails in question ((numerated OLSC letter, line 127 to line 128). The Solicitor either has the files that are required by Police, Fair Trading NSW, and me, or does not. The reasons why the files are missing are irrelevant and cannot decrease the Solicitor's responsibility, especially when it has been established that his actions were persistently unprofessional and even illegal.

This still does not prevent the Police, Fair Trading NSW and myself to force the strata manager to provide the same files, as per SSMA 1996 and 2015 (I already paid more than \$2,500.00 for them).

This is weak of submitted evidence that the Hon Matthew Kean, MP, Minister for Innovation and Better Regulation ordered Fair Trading NSW investigation about SP52948 affairs on 3rd of October 2017 (still pending outcome), and the Police Event 65804633.

In conclusion, I kindly ask the Office of the Legal Services Commissioner to take more constructive actions, review my current evidence, and ask for more explanations if deemed necessary.

I deliberately do not wish to flood your office with more evidence (although there is wealth of it).

Sincerely,

(signed)