
From: Michael Lawler
Sent: Tuesday, 16 June 2015 9:16 PM
To: ROSS, Justice
Subject: Fwd: Absence due to illness
Attachments: Correspondence to VP Lawler 29 May 2015.pdf

Dear Iain

I refer to your letter of 29 May 2015, and to our conversation of late last week in relation to that letter, and in relation to questions sent to me by Ms Pamela Williams of the Australian that presaged the sort of smear pieces that appeared the Weekend Australian, including the damage that these false and malicious attacks would do to the institution.

I confirm that, in the absence of an emergency, it is not possible to obtain an appointment with my treating psychiatrist until 26 July 2015 on account of the busyness of his practice (which date I had booked at the conclusion of my last appointment, shortly before your letter).

You accepted that it was unnecessary for me to seek a report on prognosis at this time, in circumstances where:

- 1) I wish to return to work as soon as I am advised to so by my treating specialist and have no desire to prolong my sick leave.
- 2) As I have often stated over these past few years, while I regard myself as reasonably strong - and *deeply resent* the need to resort to sick leave on account of mental health issues - I nevertheless recognise that everybody has a breaking point, and that the extraordinary and sustained stress that I have been subjected to since late 2011 has brought me close to mine on occasions, including recently. As a matter of sensible and reasonable prudence, I sought medical advice and have placed myself under the care of a respected psychiatrist and acted on expert medical advice. I do not believe that I can be fairly criticised for this. You may recall that shortly before my current period of leave, I advised you of its possibility and you reminded me that I had an unlimited entitlement and that I should use it.
- 3) I had already sought, and been given, a prognosis by my treating specialist, namely that an extended period of leave was medically indicated with an expectation that such period of leave would be sufficient to see a return to work at its conclusion, subject to the the impact of intervening events and the inability to predict such matters with certainty in any event.
- 4) The fact of the appointment I had already obtained for 26 July 2015.

I agreed that, should my doctor advise a further period of leave on that day, I will seek a report on prognosis and provide it to you.

Moving to the media reports since our conversation, I say that I have acted honestly and honourably at all times, and always conscious of observing my ethical duties.

I am being attacked falsely and maliciously - because I am the partner of Ms Kathy Jackson and because of the office I hold.

Her enemies have sought to drag me into the HSU saga at every opportunity since late 2011. I have not sought media attention. I have observed the convention that I ought not comment publicly on matters of public controversy. I have no wish to damage the institution. Indeed, you know well that I have a deep recognition of the importance of, and commitment to, the role of the Commission. As I stated at the time, it was these considerations that motivated my visit to you ahead of Guidice J's resignation to urge you to put your hat in the ring for the Presidency.

Adverse media attention has been thrust upon me at the instigation of Ms Jackson's enemies. As I have explained and predicted to you on a number of occasions, I was always going to be the subject of a concerted smear campaign. I am a target because harming me harms Ms Jackson. However, I have also become a target in my own right.

The imputations against me in the series of articles in *The Australian* since 28 February 2015 are false. Indeed, their overall effect is to stand the truth on its head. There is a body of objective evidence to disprove each of the imputations made against me.

The suggestions of conflict of interest arising from the discharge of my family responsibility to my partner are a malicious beat up.

I discussed conflict of interest issues with you immediately after the commencement of your Presidency, and have done so on a number of occasions since. Relevant conflict is a conflict of private interest with public duty. I repeat for the record that when my relationship with Ms Jackson was established in 2008, I disclosed it to Guidice J and confirmed arrangements to exclude any conflict of interest on account of the relationship. That included arrangements I had already established in my chambers to avoid dealing with health industry files pending a reassignment of the health industry from my panel (as occurred several months later).

Since that time I have had nothing to do Ms Jackson, the HSU or health industry matters in my official capacity. There has not been, and is not, any conflict of interest between my official duties and my private interests arising from my relationship with Ms Jackson or from the just support and assistance I have provided to her privately as her loving partner.

I have told you that I discussed with Guidice J whether he considered that I had an ethical obligation to resign if I wished to remain in my relationship with Ms Jackson given her status as a senior union official, and of his laughing dismissal of that suggestion with the observation that "You are not the first, and will not be the last" member to find themselves in that situation. [And he was right on both counts].

I remind you that I have been completely candid with you as to the precise nature and extent of the assistance that I was providing Ms Jackson as her partner, including in relation to the HSU's litigation against her. I have described the vast amount of work I have done for her throughout the period outside of work hours - done out of necessity because we cannot afford lawyers to defend against the (objectively) false and malicious attacks that are being pursued against her, including through the current Federal Court proceedings. I have described my central role in marshaling evidence and our strict policy that nothing I prepare, as a faithful reflection of the evidence, is used by Ms Jackson unless she first makes it her own - and "owns" it.

I record that you have never expressed any concern over a conflict of interest arising from any of that. As I recollect it, you accepted my analysis in that regard.

The most recent articles rely upon information - including objectively incorrect information - attributed to my "colleagues". Those anonymous views are used to bolster the false imputations. There is precedent for you taking focused action to identify and deal with malicious leaking to the media by member(s) of the Commission. I ask for action on this matter, including a warning to members in relation to such conduct.

In relation to today's article, I make no apology for attending the Federal Court with my partner, notwithstanding that I am on sick leave. The nature of my mental health needs, and my sick leave, do not require me to be house bound or to refrain from dealing with affairs that impact upon me. My assessment of the state of my partner's mental health caused led me to regarding it as my duty to attend with her for necessary support.

Further, I anticipated from events that it was likely that I would be the subject of some application or adverse comment during the hearing and that it was reasonably necessary for me to be in attendance to deal with that eventuality - as in fact occurred. My mere accompanying of my partner to that hearing is not a newsworthy matter, and ought not be something that could cause any damage to the reputation of the Commission. Do the citizens, whose opinion of the Commission is the focus of attention, seriously think ill of the fact that a man who happens to be a senior member of the Commission attends with his former union official partner in the Federal Court, in relation to proceedings that have nothing to do with the Commission - or any area of the Commission's work performed by him? My attendance at the Federal Court was dictated by my family responsibility duties, my official duties did not oblige me to refrain from attending. Judges and judicial officers do not lose their basic rights as citizens on account of holding office.

I ask you as my President to come to my reasonable and legitimate defence on the false public attacks against me. I suggest that, since the attacks will certainly be continuing, damage to the reputation of the Commission arising from these attacks will only be worse if there is no considered, public response in defence of me (by reference to the objective facts).

Finally, I was asked to provide a report on a complaint in relation to my conduct of a s.372 matter several months ago. I provided a detailed report. I have received no further feedback. May I have a copy of any response that has been sent to the complainant, or otherwise advised of the outcome of that complaint?

Yours faithfully

Michael

----- Forwarded message -----

From:
Date: 29 May 2015 at 14:17
Subject: Absence due to illness
To: Michael Lawler

Dear Michael,

The attached letter is from Justice Ross.

Kind regards,

Associate to The Hon. Justice IJK Ross

President

Fair Work Commission

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

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