

Media Release

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Miconduct findings for video debt lawyer.

Lawyers who exaggerate, deceive and mislead by over-stating their cases risk misconduct findings, following the outcome of disciplinary hearings which concluded in the Victorian Civil and Administrative Tribunal (VCAT) this week.

On Wednesday, 10 July, VCAT made a precedent-setting misconduct finding against a debt collection lawyer, Ms Pippa Sampson, of the law firm Goddard Elliot. The case involved charges of professional misconduct being brought against the Glen Waverly lawyer by the Legal Services Commissioner, Michael McGarvie. The Commissioner alleged Ms Sampson breached the professional conduct rules that restrict lawyers from misleading and intimidating others by over-stating the rights of their own clients.

Ms Sampson acted for two prominent DVD hire chains as their debt-recovery solicitor. Her work involved pursuing customers for small debts they owed to the stores. In his decision, Senior Member Jonathan Smithers of VCAT, found that by sending misleading letters of demand and official-looking notices when acting for the DVD stores, Ms Sampson had breached the legal profession rules and was therefore guilty of professional misconduct. VCAT stated her misconduct was magnified by the fact that she sent thousands of these offending letters of demand out to consumers each month.

In commenting on the case, the Legal Services Commissioner said: “The important message for lawyers is they have no right to exaggerate and over-state their clients' entitlements when making requests on behalf of their clients.

“Claiming legal costs from someone who is not the lawyer’s own client, and where there is no contractual right to do so, has now been found to be a gross overstatement of entitlements and therefore a breach of the rules.”

Mr McGarvie said, “Lawyers must strive for clarity and accuracy in the way they put their client's cases. Where they are deliberately ambiguous, as in this case, they can be found guilty of misconduct.”

“Another lesson for lawyers is they must not send out deceptive notices that are designed to look like official court documents, because that is also misleading”, Mr McGarvie said.

VCAT noted that that regulatory thinking about lawyer misbehaviour has evolved over the decades and lawyers face guilty findings when they fail to move with the times. “My office warned this lawyer in 2009 and again warned all Victorian debt-collection lawyers in June 2011 that they had to meet higher standards of ethical conduct to stay within the rules. VCAT has now declared this lawyer failed to meet the high ethical standards most other lawyers work hard to achieve,” Mr McGarvie said.

Mr McGarvie also said this case has important lessons for consumers being pursued for small debts. “If the contract you sign with the retailer says you will be charged legal costs on top of the debt if you fail to pay, then you may be lawfully requested to pay both the debt and the additional fees, if the fees are reasonable.”

In this case VCAT was critical of the lawyer charging fees that were sometimes three times higher than the original debt.

“Increasingly, the law protects consumers against being misled; whether by traders or by their appointed lawyers. A lawyer who misleads is risking their licence to operate”, Mr McGarvie said.

Mr McGarvie encouraged consumers to seek advice from a lawyer, a local community legal or consumer advice service if they are concerned about letters of demand they receive, and to make contact with the debt collector to clarify how the amount claimed has been calculated.

The penalty for professional misconduct by a lawyer can involve Court-imposed public reprimands, fines, legal costs orders, damaging publicity and sometimes loss of a licence. VCAT Senior Member Smithers has adjourned the case to a later date to hear submissions from the parties about an appropriate penalty.