

Note. These 'Secret Submissions' were made in reply to a Formal Complaint concerning a number of serious questions about the Professional Conduct of a Mediator (Dr Simon Longstaff) and a Solicitor (Ms Katrina Rathie) in mediation. The original complaint was made to Hon Morling QC in good faith with the advice and support of senior counsellors at Inst of Arbitrators and Mediators Aust (IAMA) and followed the guidelines at International Standards ISO 10002. These secret submissions, which were entered into Evidence in Supreme Court Proceedings 6023/7 on 3 Feb 2009 by Counsel for St James Ethics Centre, contain False and Misleading Information – as noted below.



16 March 2007

The Hon. Trevor Morling, SC
Chairman
Australian Commercial Disputes Centre
Level 10
233 Macquarie Street
SYDNEY NSW 2000

Dear Mr Morling

I am writing in response to your recent correspondence concerning a complaint, made against me, to the Board of the Australian Commercial Disputes Centre (ACDC) by Ken and Susan Flower.

I have now read the copy of the documents sent to me by you and the associated material published on the world wide web at:
<http://www.dreamscapes.com.au/csr/ACDC.htm>.

As you will understand, I consider myself to be bound by a duty of confidentiality, owed to each party, as a consequence of my having conducted the mediation of a dispute between Mr. Ken Flower and ABT Limited. That said, I believe that this duty only requires me to keep confidential those things actually said and done and that I may comment freely on matters that are alleged but, in fact, never occurred. For example, Mr. and Mrs. Flower allege, in the documents provided to me, that:

Dr Longstaff stated he was considering a commercial offer the other party had just made to him in a private meeting. The offer was to redesign the Ethics Logo of St James Ethics Centre...

This claim is entirely false. No such offer was ever made – neither explicitly nor implicitly. At no time did I make a statement of the kind attributed to me. In support of my denial might mention that:

- The Centre's logo was designed in 1997, on a pro bono basis, by the eminent design firm of Emery Vincent.
- A decade on, the Centre's logo remains what it was at the time of the mediation.
- ABT (the other party to the mediation) did not, as far as I know, work in the area of designing logos. My understanding is that ABT's business was to design and stage various events (conferences etc). This is hardly the background required for the specialist task of redesigning a logo – even if the Centre had been planning to do so.

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Note 1
Confidentiality in mediation refers to Content Of mediation
Not
Conduct of Mediation

Note 2
This is contradicted by St James Ethics Centre 12th 13th 14th 15th 16th 17th 18th Annual Reports

Page 2 of the Reports confirm the SJEC Logo was Redesigned and Relaunched in 2002 <http://bit.ly/1k05PnW>

The redesign was 1st presented at 2002 SJEC AGM. Copy reports are held at State Library NSW.

Note 3
ABT / Precinct / Enero business is full service Brand Management specialising in.

Logo Design / Design of Annual Reports / Design, Launch and Staging of AGMs including all print, web and av content.

<http://precinct.com.au/>
<http://www.enero.com/>

Note 4
During 2002 SJEC planned and implemented

The Redesign and Relaunch of the SJEC Logo

The Redesign and Relaunch of the SJEC Website

The Redesign of the SJEC Annual Report.

The planning and implementation are detailed in the 12th SJEC Annual Report

I mention this particular example in order that you might form a view of the overall credibility of Mr. and Mrs. Flower's assertions; made in support of their claim of professional misconduct.

Note 5
Dr Longstaff calls on Hon Morling to form a view based on false and misleading information
Re Logo Redesign

More generally, I attach a copy of an email (attachment 1) sent to me by Ms Katrina Rathie – of Mallesons – the Partner who acted for Mr Flower prior to and during the whole of the mediation (including the settlement). This document is attached with Ms Rathie's consent; given with the following conditions; being that the document:

Note 6
The Complaint Asserts
Threats to call Police into mediation without cause or reason
Solicitor resigned in mediation without notice or just cause
Dr Longstaff's knowledge, involvement and acquiescence of these occurrences

- be considered confidential, and
- not be provided to Mr. and Mrs. Flower

Ms Rathie's letter addresses aspects of Mr. and Mrs. Flower's complaint about which she has direct knowledge.


Note 7
Serious Mediator Solicitor Client issues arising
Acquired covertly from Solicitor without client consent
Dr Longstaff's request for Secrecy
Denial of Right of Reply, Natural Justice

I strenuously deny Mr. and Mrs. Flower's allegations of professional misconduct. I consider their assertions to be defamatory.

Why it is that Mr. and Mrs. Flower would make such fantastic claims is beyond my understanding.

I respectfully request that the Board of ACDC conclude that I have 'no case to answer' and do nothing further in relation to this matter other than, perhaps, to affirm the importance of the duty of confidentiality owed to clients participating in a mediation.

Please feel free to contact me if I can be of any assistance.

Yours sincerely


Note 8
Ms Rathie's email contains statements about The Complaint (Police Threats and Solicitor resigning) that both Dr Longstaff & Ms Rathie knew to be false.
The statements are contradicted by original documents on file including
25 March 02 Phone records from the mediation
25 March 02 Contemporaneous file notes from the mediation
2006 Contemporaneous file notes and minutes of meetings with Dr Longstaff