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Paul Singer MVO, esq.
Official Secretary to His Excellency the Governor-General of Australia
Government House
Dunrossil Drive
YARRALUMLA ACT 2600

Dear Mr Singer,

Re: Mr Norman O'Bryan, AM, SC

I refer to reports in this morning's press – specifically, *The Age* and *The Australian* – stating that Mr Norman O'Bryan, AM, SC, is no longer defending allegations that he engaged in conduct which (as he admits) warrants his being struck off as a barrister.

A more fulsome report, in the online legal news medium *Lawerly*, states:

Barrister Norman O'Bryan SC has abandoned his defence of misconduct allegations stemming from the Banksia Securities class action and expressed contrition to the court for his actions.

O'Bryan's barrister David Batt QC made the surprise announcement in the ongoing trial in the Victoria Supreme Court on Monday, saying that his client consented to judgment for monetary liability as well as any other punishment Justice John Dixon deemed fit, including the removal of his name from the roll of legal practitioners.

"Mr O'Bryan will not maintain any further defence of the allegations that have been made against him in this proceeding by the contradictor in the revised list of issues... In those circumstances, Mr O'Bryan would not be entitled to and he will not contend against the court making findings with respect of him in accordance with those allegations," Batt said.

Batt told the court that O'Bryan would also not seek to recover the millions in unpaid fees he had originally sought in the class action proceedings.

"Your Honour, we're instructed to record that in taking this course Mr O'Bryan seeks to convey and give some measure of effect to his contrition and his very deep regret for his actions."

Batt and junior counsel Mark Costello have now been excused from the matter with O'Bryan telling the court he would not make any submissions, cross examine any witnesses, or tender any of his affidavits.

The announcement came after court-appointed contradictor Peter Jopling QC concluded his opening submissions, including telling the court how O'Bryan, barrister Michael Symons, and solicitor Mark

Elliott of Elliott Legal had misled seven judges to inflate their own costs and commission owed to the Elliott-controlled funder Australian Funding Partners Limited in the Banksia proceedings.

Jopling also told the court that Elliott, O'Bryan and Symons had "jested" about the fraud they were conducting, sending flippant emails back and forth. The trio was also accused of "free-riding" throughout the class action litigation, relying mostly on legal work done by Banksia's receivers at Ferrier Hodgson.

...

Jopling told Justice Dixon that Elliott, O'Bryan and Symons had lied to seven judges during the course of the Banksia class action proceedings in their pursuit of excessive profits.

"It was an integral element we will contend of the misconduct of Messrs Elliott, O'Bryan and Symons that they misled the courts in the way that would shock the courts, all legal practitioners and the lay public," Jopling said.

Jopling claimed that Elliott, O'Bryan and Symons had Justice Dixon as well as then Justice Anne Ferguson who was overseeing the primary case, Justices John Robson and Clyde Croft who approved two settlements in the case in August 2016 and February 2018, respectively, and three judges of the Victoria Court of Appeal who dealt with a successful challenge by group member Wendy Botsman of the 2018 settlement.

Justice Dixon heard about the "deeply troubling conduct" of Elliott, O'Bryan and Symons in statements they had made to the court during the course of the litigation.

Jopling said submissions had been made for the reimbursement of \$2.55 million in costs from a partial settlement of \$13.25 million with Banksia's directors, auditors and advisors approved in August 2016. A further \$4.75 million in legal costs was sought from a \$64 million settlement made with The Trust Company in February 2018.

While these costs had not yet been paid by AFPL, the court was told these amounts had to be "reimbursed", which implied that they had already been paid by the funder, Jopling said.

"The effect, we say your Honour, was to overstate AFPL's funding risk or contribution to the settlement. The effect was to overstate AFPL's entitlement to a commission," Jopling said.

Symons' opinions provided to the court had been "absolutely critical" in obtaining settlement approval and ensuring "that the riches were going to flow through to Elliott and co.", including \$17.55 million in fees and commission approved by Justice Croft in 2018, Jopling said.

These costs and commissions were ultimately not approved by the Court of Appeal and were sent back to the Supreme Court for the current hearing.

Jopling also told the court that O'Bryan and Symons had made "totally misleading and totally dishonest" statements to the court about the "ordinary terms" that they had with AFPL.

"Their terms, we'll invite your Honour to conclude, were anything but ordinary. The arrangement between AFPL, O'Bryan and Symons was an unusual arrangement ... so they could claim 'bonus points', the language of the lawyers, in the form of larger sums at the end," he said.

...

Jopling also told the court that Elliott and O'Bryan "jested" about their misconduct in emails exchanges.

In emails sent in March 2017, Elliott mentioned that O'Bryan had issued a number of invoices marked 'paid' in a separate class action against Campaign Warehouse.

While the invoices had not in fact been paid by AFSL, they were marked as such to obtain these fees at a later date, the court heard.

O'Bryan wrote, "My clerk must have made a mistake!" in response to the references to 'paid' stamps in Elliott's email. Not only did O'Bryan not have a clerk, even if he did, they would not have made such an error, Jopling said.

"It also shows the jesting nature in which these two practitioners of the law ... thought that they could deal with these matters between themselves because they believed that no one would discover their nefarious conduct," the court heard.

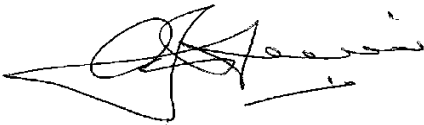
This practice stemmed from the Campaign Warehouse case and flowed all the way through to the Banksia proceedings, Jopling said.

A January 2018 email from costs consultant Peter Trimbo flagged \$22,000 which had been "overcharged" to AFPL, then known as BSL Litigation Partners.

Despite this amount never actually having been paid by the funder, emails flowing back and forth between Elliott and O'Bryan showed the barrister saying the amount was "in the mail". Elliott responded with, "I'll check the box daily, however things do go missing."

Subject to verification of the accuracy of these reports, they would strongly suggest that the conduct of Mr O'Bryan also warrants his being stripped of his Membership of the Order of Australia.

I have the honour to be, Mr Singer,
your obedient servant,



Anthony J H Morris QC

cc. Air Commodore Mark Gower AM LVO OAM (Mil)
Official Secretary to His Excellency the Governor of Queensland
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