

DISCIPLINARY HEARING
REPORT OF PROCEEDINGS

A practitioner, Michael David Cole, was found guilty after a hearing of a Reference before the Legal Practitioners Disciplinary Tribunal instituted by the Legal Practitioners Complaints Committee alleging unprofessional conduct in that, he treated a professional colleague or colleagues with gross discourtesy by sending six letters allegedly containing grossly discourteous language to the Review Officer appointed by the Directorate of Conciliation and Review to deal with his clients claim for workers compensation.

Proceedings for workers compensation benefits, claiming total incapacity to work, had been commenced by the client in May 1996 and were still pending and unresolved in June 1999 when the practitioner was first retained.

The communications sent by the practitioner by facsimile contained strong criticisms, serious allegations and dismissive descriptions in mocking or ironic language against the employer's insurer's solicitors about their conduct in opposition to the workers claim. The Tribunal found that three of the six letters fall to be categorised as being grossly discourteous to the opposing solicitors.

The Tribunal accepts that the adversarial nature of litigation can lead to vigorous debate and that perceptions of conduct by opposing solicitors can lead to feeling of resentment. In this case it is clear that the practitioner believed that the opposing solicitors were engaged in causing excessive delays in the proper finalisation of his clients claim.

Details of the history of the proceedings in the Conciliation and Review Directorate and copies of the correspondence passing between the solicitors and the Directorate were adduced in evidence. These revealed that the client's claim for compensation, which was denied by the employer, was still in controversy and that there had been no hearing to determine the merits of the claim by December 2000 when the Reference was heard.

The members of the Tribunal were divided in opinion over whether it was necessary or appropriate to consider the background history of the proceedings and whether there was any basis for the practitioner to question, as he did, the conduct of the opposing solicitors. Two legal members of the Tribunal concluded that the truth or otherwise of the statements made, even if they could be ascertained, could have no relevance in this particular case. A third legal member of the Tribunal was of the opinion that on the evidence adduced any practitioner acting for the client should have been very surprised and alarmed that the significant claim for workers compensation had remained unresolved for so long. Despite this, the third legal member concluded that the particular language used in the three letters was so excessive that it constituted unprofessional conduct. All members of the Tribunal agreed in this ultimate finding.

Rule 18(1) of the Professional Conduct Rules promulgated by the Law Society of Western Australia proscribes such conduct and provides a guide as to the type of behaviour "which may reasonably be held to violate or to fall short to a substantial degree the standard of professional conduct observed or approved by members of the profession of good repute and competency" which is the test accepted by our Courts as a definition of unprofessional conduct. The Tribunal applied that test in this case.

The practitioner was fined \$500 and ordered to pay the Complaints Committee's costs which were agreed at \$3,500. The Tribunal resolved

that this conduct was not of a minor nature so as to justify failure to publish under Section 31C(5) of the Act and it directed publication.

Mrs AJ Thompson
Registrar
Legal Practitioners Disciplinary Tribunal
June 2001