

LEGAL PROFESSION COMPLAINTS COMMITTEE

1 July 2009 - 30 June 2010

WESTERN AUSTRALIA

ANNUAL REPORT

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1. Report from the Chairperson

This report covers the activities of the Committee during its first full year of operation under the Legal Profession Act 2008. Section 571 (2) of the Act prescribes the information to be included in the Committees Annual Report. The following matters address the requirements of Section 571(2):

- a. This report summarises the complaints received this year, the conduct investigations commenced, the disciplinary proceedings commenced and their outcome and those matters outstanding. The number of practitioners who were the subject of a written complaint continues to comprise a relatively small percentage of the profession: 7.5% of WA practitioners who are certificated or deemed certificated, compared to 7.6% in the previous year and 6.85% in the year before that. The Committee proactively endeavours to reduce the causes of complaint against practitioners.
- b. Trends or special problems that have emerged:

I mentioned in last years Report that, under the new Act, the right of complainants to seek a review of the Committee's decision in the State Administrative Tribunal (SAT) has involved significant Committee staff resources. This situation continues. Between 1 March 2009 and 30 June 2010, 18 such applications were filed, and a further 12 have been filed since 30 June (one involving several practitioners). The Annual Report of the SAT has reported that these applications have also had a significant impact on the Tribunals resources.

Of those determined to date, all have been dismissed, withdrawn or struck out except that, in one case, 15 of 16 grounds of review were dismissed but one ground was remitted back to the Committee for further consideration. The Committee considers carefully all complaints referred to it, as evidenced by the outcome of the review proceedings.

The number of Applications filed by the Committee in the SAT has increased during the year under review, some 44 Applications, up from 38 Applications in the previous year and 27 Applications in the year before that. Some of these Applications involve more than one matter. There was also an increase in the number of Committee Applications which had not concluded during the period under review. These have increased to 36, up from 18 the previous year and 6 the year before that.

The volume of SAT proceedings has strained the resources of the office, particularly in light of the limited use of counsel to keep costs down.

There were a total of 80 SAT Applications on foot during the year (including review proceedings) which included several defended hearings.

c. Forecast Workload

It is anticipated that the workload of the Committee will increase. The number of SAT Review Applications as evidenced above, has increased. Since 1 July 2010 there has also been an increase in telephone and in person enquiries to the Committees office, and in the number of written complaints. These will continue to increase with the growth in the profession, and as the Committee continues to become more widely known in the community as the statutory body to which complaints or concerns about legal practitioners can be referred.

d. Proposals for improving the operations of the Committee:

The Committee is working with the Board to resolve various resource issues. Last year I reported on the continuing need for an electronic data based complaints management system and the lack of an electronic document management system (EDMRS). The Legal Practice Boards funds the operations of the Committee's office. An EDMRS was established by the Board in the Committee's office in late October 2010. The Board is taking steps to obtain a complaints management system for the Committee's office.

Adequate staffing is another critical issue for the Committee. Staff numbers have not increased for several years. This has placed a significant burden on current staff of the Committee. The Board has recently agreed to employ additional legal officers.

There is also a need for extra office space to accommodate the additional staff positions recently approved and to provide meeting rooms, a small lunchroom and storage space for documents. The Attorney General has recently been requested to fund some extra space adjoining the Committees current office for this purpose. The Government meets the accommodation costs of the Board and the Committee.

The year ahead

The Deputy Chair and I will be working with the Board to facilitate the increased resources required by the Committee in order to efficiently carry out its statutory functions.

We will also continue to liaise with the Board with a view to agreeing a joint approach to the Legal Profession Reform Project. The Committee has recently

made further submissions in respect of the Project and will continue to do so in light of its statutory role.

Thanks

My sincere thanks, again, to the Deputy Chair and Committee members, who expend a significant number of hours, pro bono, on Committee work, in order to maintain appropriate professional standards and protect the public. I also wish to thank the Law Complaints Officer and her staff for their efforts in shouldering a significant workload this year. The professional staff of the Committee are dedicated and hardworking and they rarely receive the recognition they deserve.

Chris Zelestis QC
Chairperson
December 2010

2. Report from the Law Complaints Officer

It has been another busy year for my office.

The Chair has commented on the resourcing issues of the office which have impacted on office operations. We are working with the Board to address these.

During the year the Committee's staff reviewed on an ongoing basis how we could improve our complaint handling processes. A focus has been on mediating or conciliating complaints whenever possible and appropriate.

This has led to a recent restructure of the office aimed at more efficiently and effectively dealing with complaints. The office has been divided into 3 distinct teams, a Rapid Resolution Team, an Investigation Team and a SAT/Court Team. When a written complaint is received it will be examined to see if it may be capable of resolution or whether it appears to disclose any conduct issue which may amount to unsatisfactory professional conduct or professional misconduct. Those matters which disclose clear conduct issues will be allocated to the investigation team. All other complaints will be referred to the Rapid Resolution team.

The role of the Rapid Resolution team is to seek to resolve the complaints in the first instance by direct contact with the parties and less paperwork. Such resolution may be by way of an assisted resolution between the practitioner and the complainant, or by obtaining an explanation of the practitioners conduct which clearly answers the concerns raised by the complainant and does not disclose any conduct issues warranting further investigation. Those matters not disclosing conduct issues of concern will then proceed to determination. The Committee has delegated certain decision making powers to facilitate this process. If the Rapid Resolution team become aware of any conduct issue it will seek to deal with those complaints which can be resolved and then refer only the conduct issue to the investigation team.

The Rapid Resolution team also deals with new telephone enquiries and visitors with a view to resolving these matters where possible. New targeted training has been given to the members of this team to enhance the performance of these functions.

The restructure of the office is in line with developments in Victoria, where the Legal Services Commissioner, Mr Michael McGarvie, has established a team of older practitioners aimed at speedily resolving or otherwise determining written complaints of this nature. I would like to thank the Commissioner and his staff for generously sharing with us information about how the team operates.

Staff are very enthusiastic about the restructure and keen to make it a success. It is anticipated that the restructure will lead to a speedier determination of the more straightforward service type complaints, and those of a lower level of concern, and facilitate investigations of the more serious matters. The success of the Rapid Resolution team will require the support of practitioners – I am please to advise that the Law Society has agreed to support this initiative.

Thanks

I would like to sincerely thank my team of legal practitioners, trust account inspector and support staff for their outstanding work this year in managing a significant number of enquiries, complaints and SAT and Court matters. My thanks in particular to two senior staff members, Ms Gael Roberts and Ms Gail McCahon, who between them bring some 24 years experience working for the Committee; the Committee has been very fortunate to have retained their services. I also wish to express my gratitude to two longstanding senior support staff members, Ms Michelle Johnston and Ms Deborah Baird, whose assistance over the years has been very much appreciated. Finally, my thanks to the Chair and Deputy Chair for their ongoing help and support, and to Mr Graeme Geldart at the Board for his assistance with respect to the resourcing issues of the Committee.

Diane Howell
Law Complaints Officer
December 2010

3. The Legal Profession Complaints Committee

3.1 ROLE

Under Section 557 of the Act the Legal Profession Complaints Committee continues to have the statutory responsibility of supervising the conduct of legal practitioners and enquiring into complaints and other conduct concerns which come to its attention. It also continues to have statutory responsibility for instituting and conducting disciplinary proceedings against practitioners in the State Administrative Tribunal (“SAT”).

Its purposes are set out in Part 13 of the Act as follows:

- (a) to provide for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;*
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;*
- (c) to provide a means of redress for complaints about lawyers*

The objectives of the Committee and the Law Complaints Officer are:

- To provide an efficient and expeditious system for dealing with complaints
- To proactively monitor the conduct of the legal profession
- To initiate disciplinary proceedings as appropriate
- To promote and enforce the professional standards, competence and honesty of the profession
- To maintain a productive and motivating work environment

3.2 ORGANISATIONAL STRUCTURE

The Committee is one of three, related, regulatory authorities defined under Part 16 of the Act. The other two are the Legal Practice Board and the office of Law Complaints Officer.

The Committee continues to be the statutory regulatory authority charged with the functions of supervising the conduct of legal practitioners and enquiring into complaints and conduct concerns (Section 557).

The Committee is constituted as a Committee of the Board in the Act. However, it does not derive its functions from the Board. Rather, the functions are conferred directly on the Committee by the Act (Section 557). This ensures that, as regards the performance of its functions, the Committee acts entirely independent of the Board. Nevertheless, because the functions of the two bodies are related in many respects, there is close cooperation between them to ensure the effective implementation of the regulatory system established by the Act.

The Committee's operations are funded by the Board, other than its accommodation costs which, like the Board, are funded by the Government. Section 557 of the Act provides that the Board must ensure that the Committee is provided with the necessary services and facilities to enable the Committee to perform its functions.

Section 572 of the Act establishes the office of Law Complaints Officer to assist the Committee exercise its functions and the Act provides that the Board must appoint a legal practitioner with experience in the conduct of a legal practice to this office. The Committee may delegate any of its powers or duties to the Law Complaints Officer (other than its summary conclusion powers under Section 426) and the Committee has delegated many of its functions to the Law Complaints Officer.

Finally, Part 16 of the Act provides that the Board may employ staff to assist the Committee and the Law Complaints Officer. The staff of the Committee and Law Complaints Officer comprise legal officers, support staff and a senior accountant.

3.3 MEMBERS

The Act requires that the Committee consist of:

- a. a Chairperson and not less than six other practitioners, appointed by the Board from amongst its membership; and
- b. not less than two other persons as representatives of the community, appointed by the Attorney General after consultation with the Minister responsible for consumer affairs. Community representatives must not be legal practitioners.

Mr C L Zelestis QC continued as the Chairperson. Mr E M Corboy SC was Deputy Chairperson until 24 February 2010 when he was appointed to the Supreme Court bench. Subsequently Mr J D Allanson SC was appointed Deputy Chairperson from 7 April 2010 (he was previously a member of the Committee) and he also resigned when appointed to the Supreme Court. He was replaced by Mr John Ley.

Other Board members appointed to the Committee were:

Mr R E Birmingham QC (until 8 June 2010), Mr K R Wilson SC, Mr M T Ritter SC (from 7 April 2010), Mr T Lampropoulos SC, Mr S M Davies SC (from 9 December 2009), Mr R M Mitchell SC (from 9 December 2009), Mr J G M Fiocco, Mr J R B Ley, Mr J G Syminton, Mr J L Sher (until 6 April 2010), Mr S Penglis, Ms F B Walter and Ms S M Schlink.

Community representatives appointed by the Attorney General were Ms L Anderson and Mr J Hunter (from 15 December 2009, previously a deputy community representative). The deputy community representatives were Ms G J Walker (until 15 December 2009), Ms M Nadebaum (from 16 December 2009) and Mr R Bradshaw (from 16 December 2009 until 2 April 2010).

At least one community representative must be present at each Committee meeting in order to constitute a quorum.

The Committee sits as two divisions in order to share the workload, the Chairperson chairing one division and the Deputy Chairperson chairing the other. It met on 22 occasions during the year.

3.4 STAFF

The Law Complaints Officer, Ms Diane Howell was assisted by several legal practitioners employed by the Board during the year, the number varying but averaging about the equivalent of 9.6 full time practitioners. This comprised 2 Principal Legal Officers, Ms Gail McCahon and Ms Gael Roberts who shared that position until Ms Roberts assumed the position on 1 March 2010, 2.4 equivalent full time Senior Legal Officers and the balance Legal Officers. Seven support staff were also employed in the office.

A Senior Trust Account Inspector, Ms Anna Young continued to be based at the Committee's office and conducted inspections for the Committee and the Law Complaints Officer. She assists legal officers with complaints concerning trust accounting issues, investigates possible defalcations, undertakes causal inspections and also undertakes inspections with a view to preventing future trust accounting breaches. She also assists with disciplinary prosecutions as required.

The legal officers are encouraged to attend courses and undergo training in order to improve work skills and professional knowledge. A further three legal officers became LEADR accredited mediators during the year.

4. The complaints received

4.1 INFORMAL ENQUIRIES

Members of the public with an enquiry or concern can telephone, visit or write in with an enquiry. This is a free service and a legal officer is available each work day to assist with such enquiries. Where necessary, the Law Complaints Officer will arrange an interpreter to assist the enquirer. During the period under review the Law Complaints Officer's staff received approximately 1544 enquiries, of which 1460 were by telephone. In those cases where the enquiry or complaint involved a possible conduct concern, or was not a matter that could be resolved by telephone, the caller was invited to make a written complaint or to make an appointment to see the Law Complaints Officer's staff to further discuss the matter, or for assistance in formulating a written complaint.

When possible and appropriate the legal officer will endeavour to resolve the complaint with the parties concerned when a telephone call is first received without requiring people to lodge a formal complaint.

4.2 WRITTEN COMPLAINTS

The number of complaints

The Committee received a total of 442 written complaints, compared to 455 received last year.

In addition, the Law Complaints Officer or the Committee itself initiated an enquiry into 29 matters in the absence of a complaint being received, compared to 31 such enquiries in the last reporting period. For the purpose of this report, these enquiries have been categorised as complaints by the Committee. These enquiries arise as a result of a possible conduct concern coming to the attention of the Law Complaints Officer or a member of the Committee.

Statistical information on the complaints received is tabulated at the back of this report.

The Complainants

Some 52% of complaints were from clients or former clients of the practitioner (or persons on their behalf), and 26% of complaints were from the other party to proceedings in which the practitioner acted for a party.

The types of complaint

Many complaints raised more than one matter of complaint. Costs related complaints continued to attract the most complaints. Other complaints included unethical conduct, no communication, misleading conduct, delay and failure to carry out instructions.

The areas of law

The areas of law attracting the most complaints continued to be family/de facto law (27%) followed by civil litigation (23%).

The practitioners

The description of employment categories of practitioners complained against has been changed in this report in light of the Board's new database. Sole Principal was

the largest category of practitioners complained of (32%), followed by Other Principal (25%) and Non Principal (26%).

The number of practitioners complained of

Some 368 practitioners were the subject of one or more written complaints during the period under review, compared to 356 in the last reporting period. Of this total, 302 practitioners were the subject of one complaint, (263 in the previous year), 45 practitioners were the subject of two complaints (77 in the previous year) and 21 practitioners were the subject of three or more complaints (16 in the previous year).

The Board has reported that there were 4916 certificated or deemed certificated practitioners practising in WA during the reporting period (4673 last year). However, this figure does not include those interstate based practitioners practising in this State who are no longer required to take out a practice certificate in WA by reason of holding a home jurisdiction practice certificate.

The number of practitioners complained of represented 7.5% of certificated or deemed certificated WA practitioners, compared with 7.6% of practitioners in the 2008/09 reporting year and 6.85% in the 2007/08 reporting year.

Outstanding complaints

At the commencement of the period under review the Committee had 506 matters undetermined and still under investigation (444 complaints and 62 conduct enquiries). During the period 442 complaints were received and 29 conduct enquiries commenced (totalling 471 matters). At the end of the period 501 matters remained undetermined (453 complaints and 48 conduct enquiries). The result is that over the whole of the period under review a total of 476 matters were finalised upon the conclusion of investigations and, if appropriate, a final determination by the Committee (433 complaints and 43 conduct enquiries). These statistics include previously closed files which were reopened upon further information being received.

Performance Criteria

With the coming into effect of the new Act on 1 March 2009 the LCO and her staff resolved to apply the performance criteria adopted by New South Wales under its Legal Profession Act. This will be implemented when the electronic complaints system is installed by the Board to enable the necessary statistics to be extracted.

4.3 THE COMPLAINTS PROCESS

Under the Act the Committee is required to notify practitioners of complaints, and of their right to make submissions to the Committee in respect of them. Practitioners have a professional responsibility to respond to the enquiries of the Committee and a failure to do so may result in disciplinary proceedings being commenced by the Committee against the practitioner.

Investigations

The Committee continues to have wide powers of investigation under Part 15 of the Act – it can obtain files or other documents from practitioners or third parties, examine practice records, examine on oath the practitioner or other persons involved in the practitioner’s affairs, or require the practitioner to provide written information verified by statutory declaration. The investigation of substantive complaints, or those of some complexity, may take some time. In the case of even straightforward complaints investigations may be necessary, for example, if there is a conflict in facts as to what occurred it may be necessary to make enquiry of witnesses, or examine court records. The Law Complaints Officer issues a large number of summonses each year as part of the investigative process – during the year under review the Law Complaints Officer issued approximately 73 summonses for information, documents or evidence pursuant to powers under the Act.

Receipt of several complaints, or a particular complaint, may indicate that a practitioner isn’t coping. When appropriate, the Law Complaints Officer’s staff will visit a practice and inspect practice records, which may include an audit of client files, discuss the conduct of the practice with the practitioner and make recommendations.

The trust account inspector based at the Committee’s office is also available to conduct an examination of the financial and related records of a practice, either broadly or in respect of a particular client matter.

Written complaints resolved

If it appears appropriate to do so, the legal officer handling the complaint will endeavour to informally resolve the complaint. Under the Act the Committee may refer a complaint for mediation (unless it involves possible professional misconduct), and the Law Complaints Officer and her staff will encourage practitioners and complainants to agree to this process in appropriate cases. The Committee has on its staff a number of accredited mediators. Between October 2009 and 30 June 2010 the Committee's staff successfully mediated, formally or informally, several complaints. For example:

A complaint was received of unsatisfactory professional conduct by discourtesy involving a practitioner allegedly making offensive and intimidating comments to a self-represented complainant during a conference related to a court hearing. The complainant and practitioner disagreed as to what was said. The legal officer discussed the matter with each of the parties and the matter was resolved when the practitioner provided the complainant with a simple apology in writing, expressing regret for any offence inadvertently caused to the complainant.

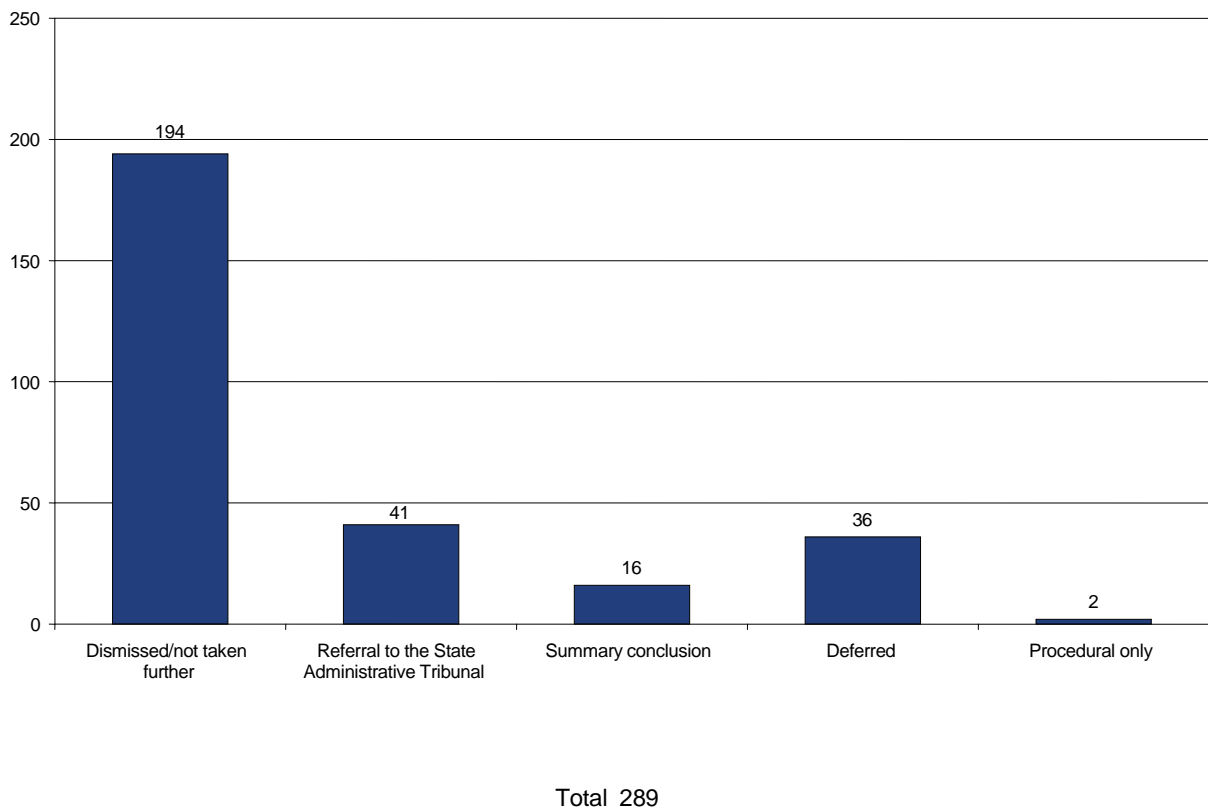
Another complaint involved an allegation that the practitioner had failed to make disclosure of costs to the complainant at the time of taking instructions. The complainant was under the impression that the practitioner would not be charging anything for his services, and that the matter would be covered by Legal Aid. The legal officer discussed the matter with both parties and the matter was resolved to the satisfaction of both parties and the complaint was withdrawn.

If the complaint isn't resolved, or withdrawn, or if it indicates a breach of the Act, it is referred to the Committee for consideration.

5. Complaints considered by the Committee

The Committee considered 289 complaints (and conduct enquiries) during the period under review. Some 20 of the complaints had earlier been initially considered by the Committee and deferred pending further investigation or advice, or pending the conclusion of litigation or a taxation of costs.

A brief summary of how these complaints were determined is as follows:



5.1 REFERRED TO THE TRIBUNAL

The Committee resolved to refer matters arising from some 41 complaints or conduct enquiries to the Tribunal. Those matters involved 31 practitioners, the Committee resolving to refer more than one matter in respect of several practitioners. Such referrals were made under Sections 428 or 436 of the Act.

The referral is by way of an Application filed in the Tribunal and served on the practitioner. It identifies the conduct issues and the facts supporting the Application. The Committee is the applicant and is represented in the Tribunal by the Committee's staff or, in the case of defended hearings, external counsel briefed from the bar.

Some 4 of the matters referred to above were not filed in the Tribunal before the end of the period under review.

5.2 SUMMARY CONCLUSION DETERMINATIONS

Under Section 426 of the Act, if the Committee:

- a) completes an investigation into the conduct of an Australian legal practitioner; and
- b) is satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the State Administrative Tribunal of unsatisfactory professional conduct (but not professional misconduct); and
- c) is satisfied that the practitioner is generally competent and diligent; and
- d) is satisfied that the taking of action under this section is justified having regard to all the circumstances of the case (including the seriousness of the conduct concerned) and to whether any other substantiated complaints have been made against the practitioner; and
- e) the practitioner concerned consents to the exercise of power by the Committee under this section

then the Committee can do one or more of the following:

- i) publically reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;
- ii) order the practitioner to pay to the Board a fine of a specified amount not exceeding \$2,500;
- iii) make a compensation order;
- iv) order that the practitioner seek and implement, within a period specified in the order, advice from the Board, or from a person specified in the order, in relation to the management and conduct of the practitioner's practice, or a specific part or aspect of the practice.

The Committee proceeded under this Section, with the consent of the practitioner concerned, in respect of the following 15 matters.

In respect of one further matter, the Committee advised the practitioner that it was of the preliminary view that there was a reasonable likelihood that the practitioner would be found guilty of unsatisfactory professional conduct in respect of a matter and that it proposed to proceed under Section 426 if the practitioner consented. The Committee subsequently received further information and submissions from the practitioner and then

resolved to dismiss the complaint under Section 425 on the basis that there was no reasonable likelihood that the practitioner would be found guilty by the Tribunal by either unsatisfactory professional conduct or professional misconduct.

The conduct matters in respect of which the Committee exercised its powers under Section 426 were as follows:

- The ground of unsatisfactory professional conduct was that between 7 February 2007 and 22 May 2007 or thereabouts the practitioner, in the course of legal practice in acting for a client Ms B, failed to advance the client's matter. The practitioner was privately reprimanded and ordered to refund to the client half the legal costs the client had paid to the firm, which employed the practitioner, rounded to \$1,800. The Committee further resolved to request the firm refund to the client the balance of the legal fees paid by her.
- The ground of unsatisfactory professional conduct was that between 14 November 2006 and 29 February 2008 the practitioner failed to progress a claim for damages by her clients against their former real estate agents who managed a property owned by them, adequately or at all. The practitioner was fined \$750.
- The ground of unsatisfactory professional conduct was that between August 2000 and January 2001 or thereabouts, the practitioner, while acting for an executor of a deceased estate, caused monies to be transferred from an interest bearing trust account in payment of his firm's costs and other disbursements in the knowledge that he had previously advised a beneficiary's legal advisor that that account had been established for that beneficiary, which carried the necessary implication that the funds in that account would not be accessed without the beneficiaries authority. The practitioner was privately reprimanded.
- The grounds of unsatisfactory professional conduct related to maintenance of the practitioner's firm's trust account. The practitioner failed to cause his firm to reconcile his firm's trust bank account for some months between July 2005 and October 2007; maintained debit balances in his firm's trust ledger between March 2006 and October 2007; failed to maintain books of account between July 2005 and October 2007 of all trust monies dealt with by his firm in such a manner as to disclose the true position as regards to those monies; applied certain trust monies to payment of costs and disbursements when an invoice had not been rendered; failed to take action in a timely manner or at all to attend to the qualifications

noted in Accountants Certificates and a management letter from his firms accountant and unduly delayed in providing one Accountants Certificate to the Board. The practitioner was fined \$1,000.

- The ground of unsatisfactory professional conduct was that the practitioner unreasonably denied another legal practitioner, with whom he shared premises, access to that practitioner's legal files over a five day period. The practitioner was fined \$2,000.
- The ground of unsatisfactory professional conduct was that the practitioner failed to properly advise a client in relation to the expiry of an appeal period. The practitioner was fined \$200.
- The grounds of unsatisfactory professional conduct were that between July 2002 and June 2004 in relation to a client Ms M H, the practitioner acted in a situation of conflicting interests in relation to the payment of her invoices, unduly delayed in finalising a deed of settlement and threatened to provide privileged information to a third party. The practitioner was privately reprimanded.
- The ground of unsatisfactory professional conduct was that the practitioner failed to pay the superannuation entitlements of an employee or comply with her legal obligations in this respect. The Committee noted that the practitioner had taken remedial action. The practitioner was fined \$200.
- The ground of unsatisfactory professional conduct was that the practitioner conducted himself in a manner that fell short of the standard of competence and diligence that a member of the public was entitled to expect of a reasonably competent legal practitioner, in that he failed to advise a client of the receipt of a facsimile from the other party to proceedings, or provide a copy of it to his client, and failed to contact the other party to clarify the contents of the facsimile. The practitioner was fined \$250.
- The ground of unsatisfactory professional conduct was that on or about 6 March 2009 the practitioner paid monies from his trust account without the necessary authority of one of the stakeholders, Mr C V. The practitioner was fined \$500 and ordered to pay compensation to Mr C V in the amount of \$1,061.27.

- The grounds of unsatisfactory professional conduct were that:
 - a) on 4 April 2008 the practitioner applied monies in the names of Mr A and Ms J (his clients) which was in the practitioner's trust account to the payment of an invoice without the necessary authorisation of the clients and
 - b) between 8 February 2008 and 22 May 2008 the practitioner failed to properly progress the client's appeal proceedings.
The practitioner was fined \$200.

- The ground of unsatisfactory professional conduct was neglect, alternatively undue delay in the course of the practice of the law, in failing to carry out his client's instructions over one seven month period and another fourteen month period. The practitioner was privately reprimanded and ordered to pay compensation to the complainant in the amount of \$2,757.86 (which represented legal fees paid by the complainant).

- The ground of unsatisfactory professional conduct was that the practitioner applied funds held in his trust account to the payment of his outstanding legal fees when he knew that the Family Court had ordered that specified liabilities of the parties be discharged from those funds. The practitioner was fined \$1,000.

- The grounds of unsatisfactory professional conduct were that the practitioner:
 - a) over a six month period breached Rule 19.03(1) of the Family Law Rules 2004 by failing to provide his client with a Family Court costs notice
 - b) breached Rule 19.18 of the Family Law Rules 2004 on 13 March 2008 by rendering an invoice otherwise than in accordance with Schedules 3 and 4 of the Family Law Rules and
 - c) on 13 March 2008 acted in breach of Section 41 of the Legal Commission Act by rendering an invoice to the client which included a charge of \$300 for a meeting on 1 February 2008 when \$240 for such a meeting was covered by the client's grant of Legal Aid.

The practitioner was privately reprimanded.

- The grounds of unsatisfactory professional conduct were neglect or undue delay in the course of legal practice over a sixteen month period in carrying out work for a client which he had agreed to do. The practitioner was fined \$100.

5.3 NOT TAKEN FURTHER/DISMISSED

In respect of 194 complaints the Committee resolved to dismiss the complaint or to not take a conduct investigation further. However, of these 194 matters the Committee resolved in 49 matters (whilst there had been no apparent breach of the Act by the practitioner complained of) to express its concern to the practitioner about an aspect of his/her conduct, or to make a recommendation to the practitioner in respect of an aspect of the conduct complained of. The Committee does so with a view to raising professional standards and preventing such conduct by the practitioner in the future.

For example:

- The Committee conducted an enquiry into whether a practitioner had grossly overcharged a client and permitted the client, who was at the time represented by a limited administrator, to execute a deed authorising a caveat over trust property of which the client was trustee, to secure the practitioners fees. The practitioner and client were friends and he had acted for the client over 11 years. The Committee noted that the invoice had been prepared by a senior costs consultant and the costs had been agreed at a lower sum. It further noted that the clients limited administrator, although not present when the client executed the deed authorising the caveat, had read the deed and consented to the client executing it and requested that it be signed in the presence of the clients psychiatrist. The practitioner was no longer practising law.

The Committee resolved that the matter be taken no further. However, it expressed its concern to the practitioner that it appeared he had not complied with the Law Society's Guidelines for closing, storage and destruction of files, in that he had destroyed the client file well within 8 years of the date on which the invoice was issued. The Committee stressed the importance of retaining client files and resolved to notify the Board of this matter in the event that the practitioner should apply for a future practice certificate.

- The Committee considered a complaint that the practitioner had engaged in legal practice without a practice certificate over a three week period. The Committee resolved not to take the matter further, noting that upon being notified that she was uncertificated, the practitioner immediately ceased practice and took steps to rectify the situation. It noted that there was no evidence that the practitioner was aware prior to the three week period that she had

failed to renew her certificate and that she dealt with the matter appropriately and in a timely fashion. However, the Committee expressed its concern to the practitioner and advised her that the Committee would view with serious concern any similar conduct in the future.

- A complainant, the husband in Family Court proceedings, complained that his wife's practitioners had breached an undertaking to the Court in that they inspected and copied subpoenaed documents which they were not entitled to view. Practitioners for both parties were granted access to the subpoenaed file for the purpose of inspecting and isolating documents, save that the wife's practitioner undertook to the Court not to inspect certain of the documents. The orders were incorrectly extracted and as a result the court subpoena officer was not aware that certain of the documents were not available for immediate inspection by the wife's practitioner. The wife's practitioner then sent an employee practitioner of the firm to inspect the documents but failed to inform her of the undertaking. The Committee was satisfied that the inspection was inadvertent, but advised the wife's practitioner that he had a positive obligation not to frustrate court orders and to make sure that he properly instructed the person inspecting documents if he is not dealing with this himself. The Committee also expressed its concern to the employee practitioner that she appeared not to have familiarised herself with the orders prior to inspecting the subpoena file.
- The Committee considered a complaint that the practitioner misled the complainant into making payment of monies allegedly owing to the practitioner's client. The Committee also considered the practitioner's conduct in acting upon his clients instructions to renege on the agreement after those monies had been paid. After a careful consideration of the matter the Committee resolved to dismiss the complaint because it was satisfied that there was no reasonable likelihood that the practitioner would be found guilty by the SAT of either unsatisfactory profession conduct or professional misconduct.

The Committee noted that the practitioner acted on his client's instructions in good faith when he wrote to the complainant advising that upon payment of the monies, the practitioner would release the signed documents. The Committee noted that the practitioner's client then changed his instructions based on receiving what he alleged to be threats against his personal safety which

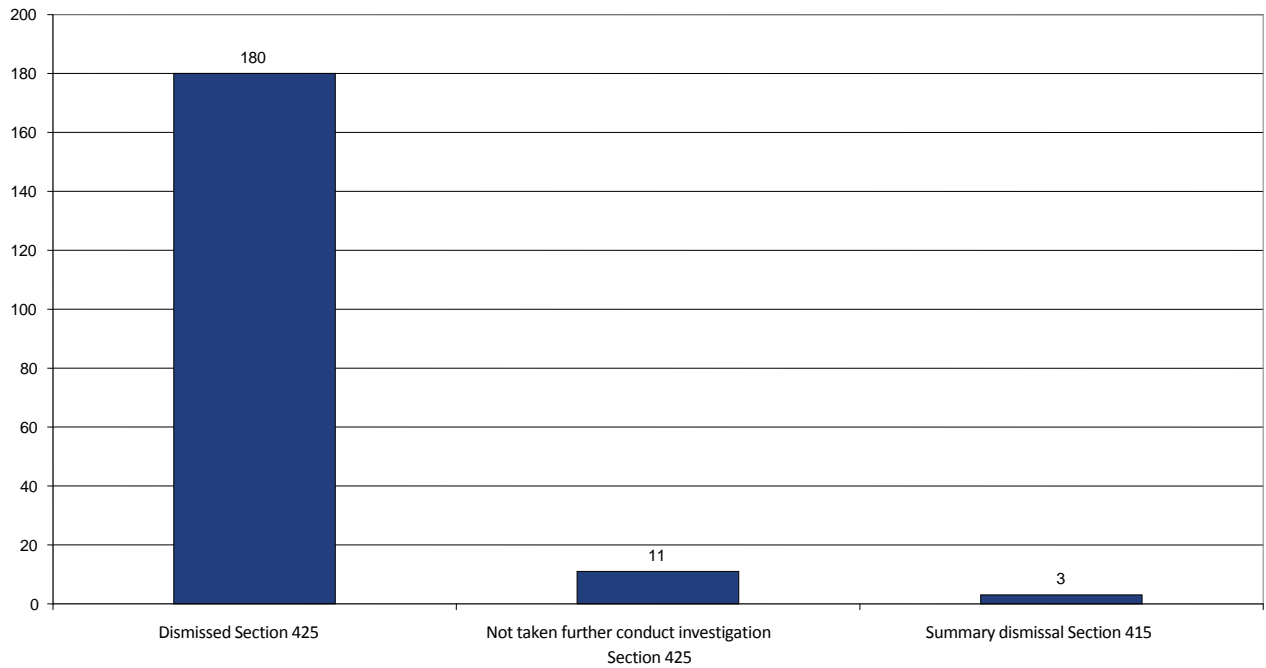
resulted in a Violence Restraining Order application and a complaint to the police.

The Committee noted that in most circumstances it would be inappropriate for a practitioner to act on a client's instructions to renege on an agreement negotiated by the practitioner after the other party had complied with the terms of the agreement. However, the Committee noted that there were unusual circumstances in this matter. These included that the complainant was alleged to have made a threat against the client's personal safety (which he did not deny), and that the practitioner then took steps to commence negotiations to ensure that the matter proceeded as previously agreed (albeit extracting from the complainant an undertaking not to engage in any violence or further threatening behaviour), with the resulting delay in the client complying with the agreement being only about a week. The Committee also noted that the practitioner had been engaged in practice for about 35 years without any adverse disciplinary history.

The Committee therefore resolved in the circumstances to dismiss the complaint but to warn the practitioner against such conduct in the future.

- The Committee considered a complaint alleging that the practitioner wrote to the complainant in terms that were discourteous and/or threatening. The Committee resolved to dismiss the complaint. In all the circumstances, it did not appear likely that the contents of the letter in question would be sufficient to constitute a reasonable likelihood that the practitioner would be found guilty by the SAT of either unsatisfactory professional conduct or professional misconduct. The practitioner clearly felt that the complainant's application to the SAT was without merit and advised his client accordingly. It may well have been necessary for the practitioner to write to the complainant to express to her his client's views. However, the Committee expressed concern in respect of an aspect of the practitioner's conduct, namely that the contents of the practitioner's letter to the complainant lacked restraint or objectivity and, in the circumstances, the Committee requested that the practitioner write a letter of apology to the complainant.

A breakdown of the 194 matters determined is as follows:



Finally, some 36 complaints considered by the Committee were deferred for further investigation or advice, or pending the outcome of taxation or related litigation. A further 2 matters considered by the Committee were only for determination on procedural matters ancillary to the complaint.



6. Tribunal and Court Proceedings

6.1 STATE ADMINISTRATIVE TRIBUNAL (SAT)

The Committee filed 44 Applications in the SAT during the period under review. This comprised Applications in respect of 39 of the 41 complaints or conduct enquiries which the Committee resolved to refer to the SAT during the period under review, plus 11 matters which the Committee resolved to file in the previous reporting year. The 44 Applications concerned some 34 practitioners.

When appropriate, the Committee includes several conduct matters in one Application, rather than file separate Applications for each matter. This has reduced a little the number of Applications filed.

When the complaint has been determined by a resolution of the Committee to commence SAT proceedings, the complaint file is closed and a SAT file is opened.

The following schedule summarises those Applications which were determined by the SAT during the period under review - there were 26 such Applications including one substantive matter (concerning a practitioner Mr P E Masten) in respect of which a decision has been delivered but the Committee is awaiting the SAT decision on penalty.

The SAT publishes its decisions on its website in order to inform the public and the profession.

At the conclusion of the period under review there were 36 Applications filed by the Committee in the SAT registry which had not been determined (compared to 18 last year). These are listed in the following schedule.

The practice of listing SAT Applications for mediation at any early stage of the proceedings has facilitated the early resolution of some Applications by way of agreed orders which are usually approved by the SAT. In relation to matters proceeding to a defended hearing, mediation may assist in narrowing the matters in issue and the evidence to be called.

Under the Act, the right of complainants to bring in person proceedings in the SAT, if unhappy with the Committee's decision to dismiss a complaint, has been restored (it had been removed in the Legal Practice Act 2003). A party to a complaint who is aggrieved by the Committee's decision can ask the SAT to review the decision (Section 435 of the Act). There were 5 such Applications filed during the period 1 March 2009 (when the Act came into effect) and 30 June 2009. During the current reporting period a further 13 review Applications were filed. The extent

of the Committee's involvement in these proceedings depends on the circumstances of the particular matter. The Committee is usually requested to appear and provide documents to the SAT, and is often requested to attend mediations in an endeavour to resolve the matter. Sometimes the matter proceeds to a defended hearing in which the Committee is a party. Of the 18 Applications referred to, the Committee understands that at least 10 were determined during the period under review: 9 were dismissed, struck out or withdrawn. In respect of a 10th matter, 15 of the review grounds were dismissed and one ground was allowed and referred back to the Committee for further consideration.

However, the volume of these applications (which has continued after the reporting period) has increased the workload of the Committee. The SAT has commented in its Annual Report on the impact of these matters on its workload and noted that "Several matters have involved examinations of large volumes of material lodged with the Tribunal by applicants for review who are self-represented". (Page 18)

6.2 SUMMARY OF TRIBUNAL MATTERS DETERMINED 1.7.09 – 30.6.10

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
34/07	23.6.09 26.10.09	BACHMANN, Tricia Yeo	Knowingly making false representations as to nature of work carried out in respect of 8 matters, wrongly invoicing, practising while suspended and failing to deposit funds into trust account.	Report to Supreme Court. Interim Suspension. Costs \$67,253.21
53/07	23.6.09 26.10.09	BACHMANN, Tricia Yeo	Misleading conduct and improperly lodging caveats against property.	As per 34/07
210/08	21.10.09 11.3.10	SEGLER, Martin Lee	a) Wrongly advising client to breach Builders Registration Act b) Misleading response to LPCC	a) suspension 3 months b) suspension 2 months (concurrent) Costs \$9,674
211/08	11.5.09 2.7.09	SEGLER, Martin Lee	Sending a letter containing threats and intimidatory demands.	Reprimand Fine \$2,500 Costs \$4,500
1/09	21.7.09	PRUNTY, Kevin Joseph		Withdrawn Costs \$1,500
5/09	3.12.09	PAPAMIHAIL, George	Sending two letters which misrepresented the terms of court orders made.	Dismissed

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
56/09	29.7.09	WILLIAMS, Paul Thomas	a) Between 18 September 2005 and 1 December 2006 in course of acting for client in civil action failing to apply for springing order, obtain counsel opinion, progress the action or respond to clients emails. b) Attempting to mislead LPCC by false statement in letter to LPCC.	Practice certificate withheld 12.7.09 to 15.9.09 Costs \$3,000
57/09	24.9.09	Name suppressed	Professional misconduct by illegal conduct.	Report to Supreme Court. Suppression order by reason of ill health.

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
61/09	7.8.09	SU, Tien Shang	<p>a) Lack of competence and diligence and undue delay by failing to advise clients to seek independent legal representation, failing to file interpleader summons, delay in answering client enquiries and providing file to new solicitors, delay in responding to LPCC and agreeing to a proposal that withdrawal of complaint be part of settlement.</p> <p>b) Deducting moneys from trust for fees without notifying client of deduction.</p>	<p>a) Fine \$15,000</p> <p>b) Reprimand Costs \$5,000</p> <p>Practitioner to successfully complete courses on ethics and professional responsibility and risk management</p>
75/09	8.4.10	MASTEN, Paul Ernest	Dishonest conduct by withdrawing and using for own benefit trust funds.	Proved. Awaiting decision on penalty
124/09	21.9.09	CHILVERS, Anthony Michael	<p>a) failing over period of time to respond to communications from trust account inspector and LPCC.</p> <p>b) failing to properly maintain trust account records and wind up his trust account in a timely manner.</p>	<p>Fine \$2,000</p> <p>Costs \$2,000</p>
134/09	12.1.10	MOHEN, Gregory Paul		withdrawn

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
163/09	4.11.09	PAIKER, Harold Joseph	Conduct towards other party: sending threatening letter and commencing defamation action.	Fine \$3,000 Costs \$1,750
164/09	2.11.09	FORBES, Stewart Vivyan	Conduct towards other party: making offensive remarks, sending threatening letter and commencing defamation action.	Fine \$5,000 Costs \$1,750
167/09	4.11.09	BENNETT, Martin Lawrence	a) Failing to fully comply with Supreme Court orders on behalf of client. b) Failing over period of time to respond to correspondence from LPCC.	a) Fine \$4,000 b) Fine \$8,000 Costs \$1,750 Undertaking to respond to future correspondence from LPCC in timely manner.
174/09	7.4.10	BRENNAN, Damien Gerard	Convictions on 70 counts of stealing from a client or client's estate and one count of attempting by fraudulent means to gain a benefit	Report to Supreme Court
197/09	4.12.09	HAVILAH, Bruce Douglas	a) Undue delay in carrying out work for client. b) Failing to adequately supervise work for client.	Fine \$5,000 Costs \$1,500
198/09	4.3.10	GUIDICE, Peter George	Undue delay in pursuing the recovery of monies claimed by a client from another party.	Fine \$3,000 Costs \$1,500 Refund fees paid by client

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
200/09	13.4.10	HAVILAH, Bruce Douglas		Withdrawn
202/09	4.3.10	GIUDICE, Peter George	a) Wrongly withholding funds on account of unbilled costs. b) Delay in pursuing costs recovery pursuant to order. c) Failing to provide trust statement to client. d) Failing to respond to clients telephone calls and correspondence.	a) Fine \$5,000 b) Fine \$2,000 c) Fine \$2,000 d) Fine \$1,500 Costs \$1,500
4/10	20.5.10	CAREY, June Pauline	Conviction shoplifting.	of Not apply for practising certificate before 1.1.11 Provide medical report to Board Continue medical treatment Costs \$1,000
11/10	20.5.10	PILLAY, Arvind Chandra	Neglect and/or undue delay in relation to commencement of property settlement proceedings.	Fine \$8,000 Costs \$2,000 Compensation of \$15,000 to client.

APP NO.	DATE DELIVERED/ PUBLISHED	PRACTITIONER	ALLEGATION	FINDING
24/10	14.5.10	ALDRICH, Alison Janice	a) Depositing moneys on account of anticipated fees and disbursements into practice general account. b) Failing to serve bill of costs showing the application of trust funds to payment of costs and disbursements.	Fine \$2,000 Costs \$1,500
33/10	14.5.10	SEPHTON, Leslie Ernest		Withdrawn Costs \$1,000 Undertaking not to apply for practice certificate in future
51/10	23.4.10	EARNSHAW, David Alan	Neglect and/or undue delay in conduct of client matter.	Fine \$2,500 Costs \$2,000
65/10	17.6.10	BATEMAN, Malcolm James Charles		Withdrawn Costs \$750 Practitioner retired and undertakes not to apply for practice certificate in future

6.3 SUMMARY OF TRIBUNAL MATTERS WHICH WERE NOT DETERMINED AS AT 30.6.10

PUBLISHED	DATE FILED	ALLEGATION	STATUS
Case 1	26.02.09	Unsatisfactory conduct: Failing to keep client informed or seek her instructions regarding party/party costs, neglect or undue delay.	Referred to mediation
Case 2	26.02.09	Unsatisfactory conduct: Failing to make superannuation contributions and lodge superannuation guarantee statements.	Referred to mediation
Case 3	26.02.09	Unsatisfactory conduct: Excessive charges, failing to supervise, failing to progress matter, failing to itemise account.	Referred to mediation
Case 4	26.02.09	Unsatisfactory conduct: terms of costs agreement, excessive charges, failure to comply with Section 34A(b) of the Legal Practitioners Act, failing to keep client informed or seek her instructions regarding party/party costs.	Referred to mediation
Case 5	26.02.09	Unsatisfactory conduct: terms of costs agreement, excessive charges, undue delay or neglect, failing to comply with court direction.	Referred to mediation
Case 6	26.02.09	Unsatisfactory conduct: terms of costs agreement and excessive charges.	Referred to mediation
Case 7	30.06.09	Professional misconduct: conflict of interest, costs issues, competence issues, wrongful written communications, failing to deposit monies into trust, failing to render accounts, failing to follow instructions, wrongly altering a costs agreement.	Further Directions hearing 13.8.10
Case 8	30.06.09	Unsatisfactory professional conduct: lack of competence and made allegations against a practitioner without reasonable grounds.	Hearing date 24.8.10
Case 9	30.7.09	Professional misconduct: neglect or undue delay and/or lack of competence/diligence in carrying out work for client.	In course of being determined

PUBLISHED	DATE FILED	ALLEGATION	STATUS
Case 10	13.8.09	Professional misconduct: neglect and/or lack of competence/diligence in conduct of client matter.	Reserved decision
Case 11	13.8.09	Professional misconduct: neglect or undue delay and/or lack of competence/diligence in conduct of client matter.	Reserved decision
Case 12	13.8.09	Professional misconduct/unsatisfactory professional conduct: lack of competence/diligence in preparation for trial of criminal charge against client; failing to serve bill of costs showing trust moneys applied to bill; failing to respond to LPCC.	Reserved decision
Case 13	13.8.09	Professional misconduct: neglect and/or lack of competence/diligence in conduct of client matter.	Reserved decision
Case 14	13.8.09	Professional misconduct/unsatisfactory professional conduct: neglect and/or lack of competence/diligence in conduct of client matters; failing to act on clients instructions; misleading client; failing to deliver client file and failing to respond to LPCC.	Reserved decision
Case 15	17.8.09	Professional misconduct: neglect and/or lack of competence/diligence in carrying out work for two clients and misleading one of the clients.	Reserved decision
Case 16	17.8.09	Unsatisfactory professional conduct: lack of competence/diligence in conduct of client matter.	Hearing date 11.8.10
Case 17	7.9.09	Unsatisfactory professional conduct: failing to provide itemised account.	Hearing date 11.8.10
Case 18	12.10.09	Unsatisfactory professional conduct: lack of competence/diligence in conduct of client matter.	Part heard

PUBLISHED	DATE FILED	ALLEGATION	STATUS
Case 19	13.10.09	Professional misconduct: misappropriating to own use monies which belonged to her client, alternatively failing to account to client for those monies.	Reserved decision
Case 20	26.10.09	Unsatisfactory professional conduct: in respect of billing practices; cost notifications; charges and security sought for costs.	Mediated. Referred to SAT for consideration
Case 21	9.11.09	Professional misconduct: wrongly suing for recovery of disbursements; failing to lodge bills for taxation; misleading court.	Hearing date 23.6.10
Case 22	9.11.09	Unsatisfactory professional conduct/professional misconduct: acting when likely to be witness; attempting to mislead LPCC; providing witness statement to other party which false in a material particular; wrongly suggesting witness confer with other proposed witnesses.	Hearing date 21.7.10
Case 23	18.1.10	Unsatisfactory professional conduct: undue delay in conduct of client matter	Mediated. Referred to SAT for consideration
Case 24	18.1.10	Unsatisfactory professional conduct: undue delay in conduct of client matter	Mediated. Referred to SAT for consideration
Case 25	18.1.10	Unsatisfactory professional conduct: undue delay in conduct of client matter	Mediated. Referred to SAT for consideration
Case 26	2.2.10	Professional misconduct/unsatisfactory professional conduct: breaching undertaking and disbursing proceeds of cheque without the necessary authority.	Hearing date 31.8.10
Case 27	4.2.10	Professional misconduct/unsatisfactory profession conduct: conduct of practice trust account.	Mediated. Referred to SAT for consideration

PUBLISHED	DATE FILED	ALLEGATION	STATUS
Case 28	4.2.10	Professional misconduct/unsatisfactory professional conduct: conduct of client trust account.	Mediated. Referred to SAT for consideration
Case 29	12.2.10	Professional misconduct/unsatisfactory professional conduct: retaining interest earned on firms trust account; failing to make superannuation contributions; failing to pay PAYG tax; failure to ensure documents of practice secured during winding up of practice.	Hearing date 13.9.10
Case 30	22.4.10	Professional misconduct: practising without certificate; failing to properly maintain trust account and failing to respond to LPCC's enquiries and summonses.	Hearing date 27.7.10
Case 31	10.5.10	Professional misconduct: in course of acting for client lack of competence/diligence; misleading court, client and other party and signing Statement of Independent Legal Advice which knew or ought to have known was incorrect in material particular.	Referred to mediation
Case 32	11.5.10	Unsatisfactory professional conduct: charging fees and disbursements which not in accordance with agreement with client.	Mediated. Referred to SAT for consideration
Case 33	19.5.10	Professional misconduct: intimidating or harassing behaviour; misleading Court; attempting to intimidate or harass potential witness.	Referred to mediation
Case 34	14.6.10	Professional misconduct: conflict of interest; swearing affidavit which false in material particular; improper use of monies when executor; imposing condition on settlement that complaint to LPCC withdrawn.	Referred to mediation
Case 35	15.6.10	Unsatisfactory professional conduct: failing to disclose to client likely Centrelink deduction from settlement sum.	Referred to mediation

PUBLISHED	DATE FILED	ALLEGATION	STATUS
Case 36	15.6.10	Professional misconduct: lack of competence/diligence in conduct of client matter; misleading representations to Court and another firm of practitioners.	Referred to mediation

6.4 REPORTS TO THE FULL BENCH

If a disciplinary matter is found proved, the SAT can decline to itself impose a penalty and instead transmit a Report to the Full Bench. The Full Bench can make any order available to the SAT and/or strike a practitioner off the roll.

Practitioners who remained, during the period under review, the subject of a Report to the Full Bench which had not been determined were Alan James Camp, Damien Gerard Brennan and Tricia Yeo Bachmann. (Subsequently the Report in respect of Mr Camp was determined by the imposition of a penalty of six months suspension from practice from 28 July 2010; Mr Brennan was struck from the roll on 26 July 2010.)

6.5 APPEALS

The practitioner Alan James Camp's special leave application to the High Court was dismissed during the period under review.

An Application for leave to appeal by Willfried Vogt from a three months suspension from practice period imposed by the SAT was dismissed on 17 November 2009.

An appeal by Martin Lee Segler from a three month suspension from practice period (and two months suspension concurrent) was subsequently withdrawn.

Tricia Yeo Bachmann lodged an appeal from a SAT decision making a report to the Full Bench in respect of her conduct which was not heard during the period under review.

Peter Neil lodged an appeal from a SAT decision dismissing his review application which was not determined during the period under review.

7. Promoting Professional Standards

The Committee aims to be proactive in its complaints handling, with a view to reducing the causes of complaint.

One of the purposes of Part 13 of the Act, which concerns complaints and discipline, is

“to promote and enforce the professional standards, competence and honesty of the legal profession”

(Section 401(b))

This involves the Committee feeding back to the profession conduct issues arising from the exercise of its functions.

It aims to do so, firstly, by advising particular practitioners about an aspect of his/her conduct which it found to be of concern, or reminding a practitioner of a particular professional obligation, or making a recommendation to a practitioner in respect of future conduct arising out of the Committee’s consideration of a complaint. The Committee took this course in respect of 49 complaints or conduct enquiries considered by it.

Secondly, it does so by disseminating information to the profession as a whole, by way of publishing notices or articles in Brief Magazine and on its website, and by speaking to members of the profession when invited to do so.

Articles published in Brief magazine (and subsequently on the Committees website) during the period under review concerned:

- The Committees summary conclusion powers
- Reporting Trust Account Irregularities
- Mediation of complaints
- Making the withdrawal of a complaint a term of settlement; professional courtesy; use of letterhead; costs disclosure and grants of Legal Aid
- Dealing with complaints about service issues
- Supervision of junior practitioners; threats of defamation; terminating a retainer; summary conclusion matters

A brochure on best practice for answering complaints is provided to practitioners.

During the year the Law Complaints Officer presented a paper on a positive approach to complaints; Senior Legal Officer Ms Karen Whitney presented a paper on understanding and avoiding complaints and chaired another seminar on ethical

issues. Arrangements have also been made with Murdoch Law School for the Law Complaints Officer to address the undergraduate legal ethics students each year.

Thirdly, the Committee aims to assist and inform the public by producing brochures and fact sheets which are available at its office, and on its website.

The publication of disciplinary proceedings in respect of practitioners also serves the purpose of promoting professional standards: adverse disciplinary findings serve not only to inform the public but also to educate the profession at large of the expected standards of professional conduct. These decisions are published by the SAT on its website and summaries of them are published in the Law Society's Brief Magazine.

The Committee has two representatives on a Board committee established to formulate new Professional Conduct Rules under the Act.

The Committee, as a stakeholder, will also continue to make submissions on any proposed legislative change which impacts on the regulatory scheme.



8. Tables

TABLE 1 INFORMAL ENQUIRIES

Legal matters raised in calls	Total % 2009 – 2010
Family/Defacto Law	32.9
Conveyancing	4.4
Civil	16
Probate/Wills/Inheritance Act	9.3
Commercial/Corporations Law	5.7
Criminal Law	9.3
Personal Injuries	7.4
Workers Compensation	5.1
Victims Compensation	0.9
Other	9

Nature of Enquiry	Total % 2009 – 2010
Communication	13
General cost complaint/query	14.5
Negligence	4.5
Costs disclosure	6.1
Overcharging	10.7
Delay	7.9
Quality of service	9.7
Instructions not followed	4.9
Trust Fund matters	1.7
Conflict of interests	2.4
Document transfer/lien	1.4
Misleading conduct	4.5
Document handling	0.6
Failure to honour undertakings	0.2
Pressure to settle	1.3
Fraud (not trust fund)	0.2
Compliance matters	0.2
Ethical matters	9.1
Other	7.1

Practitioner Mentioned	Total % 2009 – 2010
Practitioner	95.3
Other (not a practitioner)	4.7

Source of Enquiry	Total % 2009 – 2010
Client/Former Client	61
Friend/Relative of Client	8.8
Opposing party	16.2
Beneficiary/Executor/Administrator	2.7
Practitioner on another's behalf	0.7
Practitioner on own behalf	2.4
Other	8.1

Outcome of Enquiry	Total % 2009 – 2010
Provided referral for legal advice or other assistance	8.1
Provided information about legal system	8.2
Provided complaint form	13.7
Recommended direct approach to lawyer about concerns	15
Caller indicated intention to send in complaint	9
Conducted telephone mediation	2.7
Listened to caller's concerns	27.1
Explained that concerns are outside jurisdiction of LPCC	1.8
Provided information about the LPCC and LPA to a legal practitioner	1.1
Scheduled interview for caller	0.7
Other	2.3
Sent brochure/fact sheet to caller	10.3

TABLE 2 NEW COMPLAINTS/CONDUCT ENQUIRIES 2008 – 2010

	Total	Total	Total
	2007 – 08	2008 – 09	2009 – 10
Complaints	411	455	442
Conduct Enquiries	36	31	29
Total	447	486	471

TABLE 3 COMPLAINTS OPENED BY TYPE OF COMPLAINANT

	Total
	2009 – 10
Client or former client	227
Client's friend / relative	18
Opposing party	124
Beneficiary / executor / administrator	12
Practitioner on own behalf	16
Practitioner on another's behalf	11
Employee	3
Judiciary	3
Legal Practice Board	3
Police	1
Other	24
Committee enquiry	29
Total	471

TABLE 4 COMPLAINTS OPENED BY AREAS OF LAW 2008 – 2010

	Total	Total	Total
	2007 – 08	2008 – 09	2009 – 10
Commercial/Corporations Law	31	40	30
Probate/Wills/Family Provisions	48	34	32
Professional negligence	2	9	4
Leases/Mortgages/Franchises	9	12	15
Conveyancing	21	23	18
Criminal law	36	48	39
Employment/Industrial law	2	5	11
Immigration	2	5	3
Family/Defacto law	127	115	131
Personal injuries	42	26	18
Workers Compensation	11	20	20
Victims Compensation	3	2	6
Civil Litigation	93	110	111
Conduct in respect of legal practice	20	29	9
Conduct outside legal practice		9	9
Land and Environment	0	2	7
Other	15	20	24

TABLE 5 COMPLAINTS OPENED BY AREAS OF COMPLAINT

	Total
Cost/Payment Issues	2009– 10
Failure to pay third party	4
Overcharging	96
No costs disclosure	27
Transfer costs without authority	2
Failure/delay to provide a detailed account	17
Other cost complaint	41
Communication/Service	
Act without/contrary to instructions	33
No communication	67
Failure to carry out instructions	55
Delay	61
Lack of supervision	9
No client advice	14
No advice on progress	11
Discourtesy	44
Neglect	37
Personal Conduct	
Unethical conduct	113
Negligence	28
Misleading	63
Conflict of interest	32

Failure to transfer documents	11
Communicating with a client of another solicitor	1
Threatening behaviour	23
False swearing of documents	4
Breach confidentiality	8
Undue pressure	11
Alteration of documents	1
Liens	6
Non-Compliance	
Not complying with undertaking	2
Practising without a practice certificate	7
Not complying with legal profession act/regulations	6
Trust Account Matters	
Breach of Sections of Act / Regulations relating to trust monies	5
Misappropriation	1
Failure to account	7
Other – Trust Account Matters	2
Other	30

TABLE 6 COMPLAINTS OPENED BY PRACTITIONER TYPE OF EMPLOYMENT

	Total
	2009 – 10
Barrister	19
Consultant	1
Sole Principal	151
Other Principal	120
Non Principal	121
Government Legal Position	15
Corporate Legal Position	9
Not practising	10
Struck off/suspended/deceased	6
Firm only	3
Not named/Not known	16

TABLE 7 COMPLAINTS OPENED BY PRACTITIONER AREA OF PRACTICE 2008 – 2010

	Total	Total	Total
	2007 – 08	2008 – 09	2009 – 10
CBD/West Perth	208	236	239
Suburbs	158	172	182
Country	68	39	31
Interstate	2	5	11
Not known	11	34	8
Total	447	486	471

TABLE 8 COMPLAINTS OPENED BY PRACTITIONER YEARS IN PRACTICE 2008 – 2010

	Total 2007 – 08	Total 2008 – 09	Total 2009 – 10
Under 5	60	74	71
5 – 9	82	92	69
10 – 14	52	67	70
15 – 19	58	75	62
20 – 24	53	50	53
25 – 29	68	52	55
30 – 34	41	42	45
35 – 39	10	9	26
Over 40	9	8	11
Not known/Not applicable	14	17	9
Total	447	486	471

TABLE 9 COMPLAINTS OPENED BY PRACTITIONER AGE 2008 – 2010

	Total 2007 – 08	Total 2008 – 09	Total 2009 – 10
Under 25	6	2	1
25 – 29	19	20	21
30 – 34	31	40	38
35 – 39	42	64	44
40 – 44	39	56	59
45 – 49	97	81	72
50 – 54	82	81	77
55 – 59	59	57	75
60 – 64	32	50	44
65 – 69	18	9	12
70 – 75	4	5	5
76 – 80	3	2	2
81+	0	0	4
Not known/Not applicable	15	19	17
Total	447	486	471

TABLE 10 NUMBER OF PRACTITIONERS COMPLAINED OF 2008 – 2010

	Total 2007 – 08	Total 2008 – 09	Total 2009 – 10
Practitioners with 1 complaint	242	263	302
Practitioners with 2 complaints	35	77	45
Practitioners with 3 or more complaints	32	16	21
Total number of practitioners	309	356	368

TABLE 11 OUTSTANDING COMPLAINTS 2008 – 2010

	Total 2007 – 08	Total 2008 – 09	Total 2009 – 10
Outstanding complaints	443	444	453
Outstanding conduct investigations	85	62	48
Total	528	506	501

TABLE 12 COMPOSITION OF THE WA LEGAL PROFESSION AS AT 30 JUNE 2010

	Resident Females	Non- Resident Females	Resident Males	Non- Resident Males	Totals
Barristers	37	0	161	1	199
Commonwealth Government	34	0	25	0	59
Consultants	21	1	42	0	64
Director	57	0	247	1	305
Employees	1167	60	906	55	2188
Equity Partner	38	0	294	4	336
Fixed Profit-share Partner	6	0	24	1	31
Inhouse	164	16	191	15	386
Locum	1	0	0	0	1
Not practising (certificated)	159	30	96	23	308
Salaried Partner	16	0	38	2	56
Sole Practitioners	111	1	351	1	464
Judiciary [^]	0	0	7	0	7
Deceased [^]	1	0	0	0	1
Struck Off /Suspended [^]	0	0	2	0	2
State Government*	40	0	16	0	56
A Person of Interest	1	0	0	0	1
Practice Certificates ISSUED	1853	108	2400	103	4464
S.36 Practitioners					
** State Solicitor's Office	62	0	50	0	112
**Director of Public Prosecutions (State)	55	0	51	0	106
**Other Departments	137	2	93	2	234
TOTAL PRACTITIONERS	2067	110	2578	105	4916

[^] held a practice certificate during 2009/2010, however by 30 June 2010, were appointed judiciary/deceased/struck off/suspended.

* State Government employees who held a practice certificate during 2009 - 2010

** State Government employees taken to be certificate pursuant to Section 36 of the Legal Profession Act 2008

9. Information Statements

9.1 FREEDOM OF INFORMATION ACT

Pursuant to Part 5 of the Freedom of Information Act 1992 the Committee is required to publish an Information Statement. The Attorney General has approved, in accordance with Section 96(1) of the said Act, publication of the statement by incorporation in an annual report. Accordingly the Information Statement of the Committee is at the end of this report. It has been prepared in accordance with the requirements of Section 94 of the said Act.

9.2 PUBLIC INTEREST DISCLOSURE

In accordance with the Public Interest Disclosure Act 2003 the Committee has appointed a Public Interest Disclosure Officer.

**FREEDOM OF INFORMATION ACT 1992 (“FOI ACT”)
INFORMATION STATEMENT
LEGAL PROFESSION COMPLAINTS COMMITTEE**

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the FOI Act and relates to the Legal Profession Complaints Committee (“*Complaints Committee*”).
2. The structure of the Complaints Committee is set out in Sections 555 and 556 of the *Legal Profession Act 2008* (“*the Act*”); the functions of the Complaints Committee are set out in Sections 409, 410, and 557.
3. The functions of the Complaints Committee including, in particular, its decision making functions, do not affect members of the public; they affect Australian Legal Practitioners (as defined in Section 5(a) of the Act) on the one hand and those among the classes of persons set out in Section 410(1) of the Act from whom complaints are received on the other hand.
4. The policy of the Complaints Committee is formulated by statute and is set out at Part 13 of the Act. There are no arrangements to enable members of the public to participate in the formulation of its policy or in the performance of its functions other than the fact that representatives of the community are members of the Complaints Committee being appointed as such by the Attorney General.
5. The kinds of documents that are usually held by the Complaints Committee comprise firstly its complaint files containing correspondence, memoranda, and the like, and secondly documents related to meetings of the Complaints Committee, such as agendas, minutes, memoranda, and the like. The Complaints Committee also prepares brochures which explain the nature and limits of its functions.

There is no written law other than the FOI Act whereunder any of these documents can be inspected.

There is no law or practice whereunder any of these documents can be purchased. Copies of the said brochures can be inspected or obtained from the Complaints Committee free of charge, or can be downloaded from <http://www.lpbwa.org.au/>.

6. Copies of the said brochures are available at the offices of the Complaints Committee at 2nd Floor, 55 St Georges Terrace, Perth, to any person who calls at those offices or who otherwise contacts the Complaints Committee with an enquiry concerning the nature and limits of its functions. Copies of the said brochures are also available to the general public for inspection or downloading from <http://www.lpbwa.org.au/>.

7. Karen Whitney of 2nd Floor, 55 St Georges Terrace, Perth, Legal Practitioner is the officer to whom initial enquiries as to access to documents can be made and who has been generally directed to make decisions under the FOI Act; enquiries may be made by telephone (08) 9461 2299.
8. Access applications under the FOI Act can be made to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.
9. The Complaints Committee has no procedures for amending under Part 3 of the FOI Act personal information in its documents. Any application for an amendment would be dealt with in accordance with Part 3 of the FOI Act. Such applications may be addressed to the Complaints Committee by letter to Post Office Box Z5293, St Georges Terrace, Perth WA 6831 or by facsimile message at (08) 9461 2265.
10. None of the Complaints Committee's functions affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.
11. Applications for access should be in writing, give enough information so that the documents requested can be identified, give an Australian address to which notices can be sent, and be lodged as provided in paragraph 8 with a fee of \$30 (unless the application is one for personal information about the applicant only which may be made without fee). No reductions to the application fee are available.
12. Applications will be acknowledged in writing and applicants will be notified of the decision as soon as practicable and in any case within 45 days. In the notice of decision applicants will be provided firstly with the date of its making, the name and designation of the officer making it, the reasons for classifying any particular document as exempt, and the fact that access is given to an edited document and secondly with information as to the right to review and the procedures to be followed to exercise that right.
13. Access to documents may be granted by way of inspection, copies of documents, a copy of an audio or video tape, a computer disk, a transcript of a recording, shorthand or encoded document from which words can be reproduced, or by agreement in other ways. Charges may apply. For financially disadvantaged applicants or those issued with prescribed pensioner concession cards charges to provide copies of documents, audio or video tapes, computer disks, transcripts of recordings, shorthand or encoded documents from which words can be reproduced are reduced by 25%.

14. Applicants who are dissatisfied with the decision of any officer may apply for an internal review of the decision; the application should be made in writing within 30 days of receipt of the notice of decision.
15. Applicants will be notified of the result of an internal review within 15 days.
16. Applicants who are dissatisfied with the result of an internal review may apply to the Information Commissioner for an external review; details will be advised to applicants when the internal review decision is issued.