

# Threats to Cause Extraneous Detriment

Legal Profession  
Complaints  
Committee

The Committee has recently seen an increase in practitioners using threats to cause extraneous detriment in order to further their clients' interests. The threats have all been made in the context of letters of demand sent in civil disputes. Some examples include a threat to:

- lodge a formal complaint with the police;
- report the matter to the "relevant authorities";
- lodge a caveat (when there was no basis to do so).

In each case, the threat was coupled with a demand for monies or the return of property and was considered to be over and above what was necessary to pursue the clients' demands and inappropriate. The conveying of such threats is intimidatory and does not assist the resolution of disputes; indeed, it has the capacity to inflame the situation and, in extreme cases, has the potential to breach s.397 Criminal Code.

Practitioners are urged to exercise restraint in the drafting of letters of demand and only seek to demand what is recoverable under the due process of law and only refer to the taking of debt recovery proceedings should the demand not be met.

## ABUSE OF PROCESS

The Committee has also been receiving an increasing number of complaints concerning practitioners conducting proceedings solely for the purpose of delaying payment of money or performance of an obligation by a client, when there are no or insufficient grounds to warrant such proceedings. Such conduct may amount to an abuse of process.

A practitioner's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with the duty a practitioner has to his or her client: rule 5 of the *Legal Profession Conduct Rules 2010*. As part of that duty, practitioners are required to assess their instructions in light of their knowledge of the law and their duty to the court and the administration of justice. Practitioners should not simply be a mouth piece for their clients. It is not an answer to an allegation of abuse of process that the practitioner was following the client's instructions. A practitioner must at all times exercise his or her independent judgment and provide advice as to the merits and appropriateness of taking action, including taking no action.

Practitioners should be mindful at all times of their obligations to the court and the administration of justice when advising clients and obtaining and following their instructions.

## DISCOURTEOUS BEHAVIOUR

The Committee has received a number of complaints where practitioners, either in email communications, by letter or orally, have failed to observe professional courtesy.

The *Legal Profession Conduct Rules 2010* at rule 6(1)(a) requires as a fundamental ethical obligation that a practitioner must:

*"be honest and courteous in all dealings with clients, other practitioners and other persons involved in a matter where the practitioner acts for a client"*.

Further, Guideline 2 of the Law Society's Ethical & Practice Guidelines (7 September 2010) discusses the issue of professional courtesy and in the context of professional communications with colleagues states at 2.2: *"Practitioners should not use sarcasm, aggression or rude or offensive language."* This equally applies to professional dealings with non lawyers as well.

Offensive or discourteous language that has been the subject of complaints includes telling another practitioner to *"f.k off"* or telling a complainant that he or she is *"stupid"*. These are obvious examples of professional discourtesy. Practitioners are urged to use restraint in the highly charged situations which often lead to these types of comments being made.

Other less obvious examples of discourtesy seen by the Committee commonly include the failure to respond to communications from the practitioner or self represented litigant on the other side. The reason often given for such failure is that a response was not required in the absence of the client's instructions. This can be very frustrating for the other party, particularly a self represented litigant, and can escalate a dispute and indeed result in a complaint to the Committee. If you don't have instructions to respond to the particular issue raised then it is best to let the other side know that is the case. Time spent sending such a communication is never wasted, particularly when it saves time later in having to respond to a complaint.