

# You and the LPCC

## How to Reduce Stress

Legal Profession  
Complaints  
Committee

Dealing with the demands of a busy legal practice can be very stressful, and the Legal Profession Complaints Committee (LPCC) is mindful of the added pressure and distress an investigation by the LPCC can cause. In this article, the LPCC offers information about its new investigation procedures and some practical tips that may assist practitioners in making the investigation process a less stressful experience overall.

### THE INVESTIGATION PROCESS

In an effort to streamline the complaints process and reduce the amount of time practitioners spend dealing with complaints, the law complaints officer has recently implemented major changes to the complaints handling process. There are now two stages to an investigation:

- An initial assessment and conciliation stage during which straightforward concerns about customer service and charging are dealt with immediately and informally by the LPCC's new Rapid Resolution Team (RRT).
- The formal investigation process by the LPCC's Investigation Team for matters which raise serious conduct issues or matters which are not otherwise appropriate to deal with informally.

#### The RRT

All concerns about the conduct of legal practitioners are now brought to the attention of the RRT at first instance. A legal officer conducts an informal assessment to identify the issues at the core of the dispute and determine whether those issues are amenable to immediate informal resolution. If so, the legal officer will contact the practitioner by phone to discuss the concerns and attempt to conciliate an immediate resolution to some or all of the concerns. The LPCC does not consider any concerns successfully resolved by the RRT in this manner as formal complaints and such matters do not become part of a practitioner's disciplinary history.

Communication issues, delays, liens and minor costs disputes are the types of matters which the RRT commonly deals with successfully without proceeding to a formal investigation. Although many of these concerns are not serious enough to require formal investigation, they comprise a large percentage

of the complaints received by the LPCC. The chance to resolve consumer concerns at this stage (usually without the need for a lengthy written response) provides an excellent opportunity to reduce the potential stresses associated with the complaints process.

#### The Investigation Team

Where it would be inappropriate to deal with alleged conduct informally (such as where an allegation raises serious conduct issues) the RRT refers the matter to the Investigation Team for a formal investigation. Once the matter is referred to the Investigation Team, a legal officer forming part of that team will obtain the particulars of the complaint from the complainant and frame the complainant's concerns in the context of an allegation of unsatisfactory professional conduct or professional misconduct. The legal officer will then refer the complaint to the practitioner for a formal written response.

The purpose of the investigation is to provide the LPCC with sufficient information to enable it to decide whether there is a reasonable likelihood that the State Administrative Tribunal (SAT) would find the legal practitioner guilty of unsatisfactory professional conduct or professional misconduct. If the LPCC is satisfied that there is a reasonable likelihood of this, it will either:

- offer the practitioner the opportunity to have the matter dealt with by the LPCC pursuant to its powers of summary conclusion in s426 of the Act (for unsatisfactory professional conduct only, and subject to the practitioner's consent)
- or
- refer the matter to the SAT for a hearing pursuant to s428 of the Act.

In determining whether the matter should be dealt with by the SAT or summarily pursuant to s426, the LPCC will consider a number of factors, including whether the practitioner is generally competent and diligent, and whether in all the circumstances (including the seriousness of the conduct and the practitioner's disciplinary record) action under s426 is justified.

Matters raising a reasonable likelihood that the SAT would find the legal practitioner guilty of professional misconduct *cannot* be dealt with under s426.

Practitioners offered the opportunity to have a matter dealt with summarily pursuant to s426 should carefully consider this option. Failure to consent to the exercise of the LPCC's summary conclusion powers usually results in the matter being referred to the SAT, where the matter is dealt with in a public forum, and where proceedings are significantly more time-consuming, expensive and stressful. Furthermore, the proceedings may result in a formal finding by the SAT that the practitioner was guilty of unsatisfactory professional conduct. The LPCC *cannot* make such a finding pursuant to its summary conclusion powers.

By consenting to have a matter dealt with summarily, the practitioner is agreeing to have the LPCC:

- consider *whether there is a reasonable likelihood the SAT would find the practitioner guilty of unsatisfactory professional conduct*

and, if so

- impose a penalty ranging from a reprimand to a fine of no more than \$2,500 and/or limited compensation.

Consenting to the LPCC's summary conclusion powers *is not* an admission of "guilt" by the practitioner in respect of the complaint.

## HOW TO REDUCE THE STRESS ASSOCIATED WITH AN LPCC INVESTIGATION

- *When receiving a call from the RRT*, view this as an opportunity to resolve a potential dispute. It should not be seen as an "accusation" which requires a defensive stance.
- *Use the opportunity to have the dispute conciliated by the RRT before it develops into a formal complaint.* This is the simplest, cheapest, most private and least time-consuming way to resolve a dispute. The RRT will take a pragmatic approach and assist you to come to a resolution that all parties can live with.
- *Read the correspondence from the LPCC carefully and provide a full response to the complaint.* Ensure that you respond to each issue raised by the legal officer and where appropriate, provide supporting documentation to avoid delays caused by the LPCC requesting further information.
- *Avoid taking a defensive stance.* Ensure that any objections raised are valid. For example, there are specific provisions of the Act which permit the LPCC to request confidential and privileged information. It simply delays resolution of the complaint to raise objections without fully appreciating the provisions of the Act.
- *Be frank.* Legal Profession Conduct Rule 50 requires a practitioner to be "open and candid in his or her dealings with a regulatory authority" and to provide "a full and accurate account of his or her conduct". A number of unfortunate

practitioners have ended up in SAT on allegations of misleading the LPCC in circumstances where the original complaint was relatively minor. Don't make things worse for yourself by failing to be frank.

- *Be courteous – don't shoot the messenger!* The LPCC has a statutory obligation to investigate and discourtesy can make matters worse, as it may be the basis for a further allegation of unsatisfactory professional conduct.
- *Respond on a timely basis.* Legal Profession Conduct Rule 50 requires a practitioner to respond to requests by a regulatory authority for comments or information within 14 days (or such time as extended). Responding on a timely basis assists the LPCC to progress the complaint to a timely resolution. The LPCC is, however, aware of the demands of legal practice and if you cannot meet the deadline, contact the LPCC to discuss a possible extension of time. Don't simply fail to respond, as it may be the basis for a further allegation of unsatisfactory professional conduct.
- *Talk to someone.* If you don't know how to respond or what you should do, seek assistance from a senior member of the profession. Senior counsel (as part of that role) provide guidance to practitioners in professional conduct matters.
- *In appropriate circumstances, be prepared to accept an offer by the LPCC to have a matter dealt with summarily pursuant to s426.* The process is private, faster, less stressful and does not result in a formal finding of unsatisfactory professional conduct.

By taking these steps, practitioners can assist with the expedient handling of complaints, ensuring a more streamlined, less stressful process, which is the best possible result for complainants and practitioners alike.

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