

---

# Improper pressure by legal practitioners in correspondence

Diane Howell  
Law Complaints Officer  
Legal Practitioners Complaints Committee

From time-to-time the Legal Practitioners Complaints Committee (LPCC) is required to deal with complaints involving practitioners making improper threats — either to fellow practitioners or to an opposing party.

There are no Professional Conduct Rules specifically dealing with this issue, possibly except for Rule 3.1, which applies generally and states that "*a practitioner must not attempt to further a client's case by unfair or dishonest means*" and Rule 20.1, which states that "*a*

*practitioner must treat professional colleagues with the utmost courtesy and fairness.*"

The conduct of legal practitioners is based on what may be classified as satisfactory or unsatisfactory behaviour in any given situation. Therefore, the conduct of a practitioner may not come within the provision of a particular Professional Conduct Rule, but nonetheless the conduct of the practitioner may be subject to disciplinary procedures.

In a recent matter that came before the committee, Practitioner A wrote to Practitioner B (the Practitioner A client's former solicitor) stating that in the event that his client's legal fees with Practitioner B could not be resolved, his client reserved the right to raise Practitioner B's conduct of the claim with the Legal Practice Board. The committee was of the view that Practitioner A was guilty of unprofessional conduct by improperly coupling a demand for a waiver of fees with referring the matter to the Legal Practice Board in his letter to Practitioner B. The committee resolved in that matter to impose a penalty of a fine of \$1,000.00.

An article published by the Law Society in *Brief* in October 1998 and reprinted in March 2004 sets out some examples of matters which have been previously dealt with:

- Where the plaintiff in an action is a practitioner suing for fees, the practitioner acting on behalf of the defendant cannot threaten to lodge a complaint against the plaintiff to the disciplinary authority, if the plaintiff does not accept a settlement proposal.

- It is inappropriate for a practitioner who acts on behalf of a barrister to demand the payment of the barrister's fees from the barrister's former instructing solicitor, if that demand includes reference to the solicitor being reported to the disciplinary authority in the event of payment not being made.

It is not permissible to submit a proposed settlement on the basis that, if it is not accepted, then confidential information will be revealed or, alternatively, that certain matters will be referred to a taxation authority.

Not infrequently, instructions are received to recover monies for goods and services supplied where the cheque in payment has been dishonoured. The practitioner will be guilty of unprofessional conduct if, in demanding payment from the debtor, reference is made to reporting the debtor to the police in the event of payment not being made.

Given the above, it is important that practitioners do not make improper threats in correspondence or otherwise as an improper threat may amount to unsatisfactory conduct under the *Legal Practice Act 2003*.