

## **Legal Profession Complaints Committee**

### **Summary Conclusion Powers**

*Diane Howell*

*Law Complaints Officer, Legal Profession Complaints Committee*

Under Section 426 of the Legal Profession Act 2008 (the Act) the Legal Profession Complaints Committee has the ability to determine conduct matters summarily, i.e. without referring the matter to the State Administrative Tribunal.

*How does the Committee decide if a matter can be dealt with summarily?*

Under Section 426 the Committee can only deal with a matter summarily if an investigation into the conduct of the practitioner has been completed and the Committee 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);
- that the practitioner is generally competent and diligent;
- that exercising summary conclusion is justified, having regard to all the circumstances of the case (including the seriousness of the conduct concerned) and whether any other substantiated complaints have been made against the practitioner, and

the practitioner concerned consents to the Committee exercising its summary conclusion powers.

*What is the procedure if the Committee is considering dealing with a matter summarily?*

The Committee will firstly resolve to consider exercising its summary conclusion powers under Section 426. If that resolution is made then a draft ground of unsatisfactory professional conduct, incorporating sufficient facts to allow the Committee to make a decision, will be drafted and referred back to the Committee for settling. At the same time the Committee will be provided with a schedule of any substantiated complaints against the practitioner over the past ten years and a brief report on all current complaints and enquiries against the practitioner. Substantiated complaints include the practitioner's disciplinary record plus any complaints or conduct enquiries over the past ten years in respect of which the Committee has expressed concern to the practitioner in respect of their conduct.

If the Committee resolves to consider exercising its summary conclusion powers then both the practitioner and the complainant will be informed of that decision. At that time the complainant will be asked about their views on the making of any compensatory orders.

*What is the procedure if the Committee decides to deal with a matter summarily?*

If, after receiving the draft grounds and other documents described, the Committee resolves that it is satisfied that it is appropriate to exercise summary conclusion in respect of the matter, the grounds of unsatisfactory professional conduct will be settled and sent to the practitioner, together with a copy of Sections 426 and 448-450 of the Act and the complainant's views on the making of a compensation order (if any). The practitioner will be advised that the Committee is of the preliminary view that there is a reasonable likelihood that the practitioner would be found guilty by the State Administrative Tribunal of unsatisfactory professional conduct on the grounds and requested to advise whether he/she consents to the Committee dealing with the matter under Section 426. If he/she does, the practitioner is invited to make written submissions in respect of the matters upon which the grounds of unsatisfactory professional conduct are based and any reprimand or order which the Committee has power to impose.

If the practitioner does consent to summary conclusion the Committee will then consider the grounds of unsatisfactory professional conduct, the submissions from the practitioner and the complainant's view on compensation (if any). The Committee will determine the matter on the papers.

Once the Committee has formally exercised summary conclusion written reasons for the Committee's decision will be provided to the practitioner and the complainant. There is a right of appeal – an “aggrieved person” may apply to the State Administrative Tribunal for a review of the Committee's decision (Section 435(1)).

*What happens if the practitioner decides not to consent to summary conclusion?*

If the practitioner does not consent to summary conclusion the matter will be further considered by the Committee. It may dismiss the complaint, or dismiss the complaint but express concern to the practitioner about an aspect of their conduct, or refer the matter to the State Administrative Tribunal.

*What orders can the Committee make summarily?*

After considering the matter further in light of the practitioner's submissions, the Committee may resolve that it is not satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the State Administrative Tribunal of unsatisfactory professional conduct.

However, if the Committee resolves that it is satisfied that the preconditions to it exercising its summary conclusion powers have been met, under Section 426 (2) the Committee may do one or more of the following:

- publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;
- order the practitioner to pay a fine of up to \$2500;
- make a compensation order;

- order that the practitioner seek and implement, within a specified period, 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 specified aspect of the practice.

*What kind of matters does the Committee deal with summarily?*

Section 426 of the Act only came into operation on 1 March 2009. Generally speaking, the Committee will move to exercise its summary conclusion powers in cases of a lesser degree of seriousness. The Committee's summary conclusion powers under Section 426 are different to those under the previous legislation, namely, Section 177 of the Legal Practice Act 2003. However, matters dealt with by the Committee under Section 177 of the old Act, as set out in the Committee's last Annual Report, included:

- acting whilst in a conflict of interest by remaining on the court record in appeal proceedings for clients at the same time as suing those clients for unpaid fees. The penalty imposed was a fine of \$400 and a reprimand;
- failing to serve a notice of rights with a bill of costs in a family law matter, as required by the Family Law Rules. The practitioner had also sent bills of costs to three clients which did not include a notice regarding requests for itemised bills as required under section 231 of the *Legal Practice Act 2003*. The penalty imposed in both matters was a reprimand;
- practising without a practice certificate over a four week period. The penalty imposed was a fine of \$300;
- two practitioners in a firm who were involved in a client matter were each found guilty of unsatisfactory conduct in ceasing to act for a client without good cause or the client's consent and shortly thereafter improperly rendering an account to that client. The first practitioner received a reprimand, the second practitioner was fined \$500;
- publishing an advertisement that was in breach of Section 17 of the Civil Liability Act 2003. A fine of \$500 was imposed.

Details of other matters dealt with by the Committee by summary conclusion under the previous legislation can be found in the Committee's Annual Reports, available at the website [www.lpbwa.org.au](http://www.lpbwa.org.au).