

LEGAL PROFESSION BOARD OF TASMANIA

No. 32/2017

COMPLAINANT

Complainant

-AND-

A PRACTITIONER

Practitioner

DETERMINATION AND REASONS FOR DETERMINATION

Catchwords

Professions and Trades- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- Barrister – advice on plea – allegations of failure to communicate

Legal Profession Act 2007 – s 433(1)(a)

Determination

The complaint is dismissed pursuant to section 433(1)(a) of the *Legal Profession Act 2007* ('the Act') as the Board is satisfied that the complaint is lacking in substance.

Reasons for Determination

1. This matter come to the Board by way of a complaint received on 28 February 2017.
2. The Practitioner acts in criminal law matters. The Complainant says that the Practitioner acted for the Complainant in a bail application funded by a grant of legal aid and provided advice on criminal charges.
3. The complaint form contains minimal information however it appears that the Complainant says that the Practitioner advised the Complainant to plead guilty. The Complainant alleges that during the application for bail the Practitioner didn't participate in the bail hearing and has provided different versions of advice to the Complainant and his wife.
4. There have been a number of attempts by the Board to provide an opportunity to the Complainant to provide further information in relation to the complaint. Those attempts have been wholly unsuccessful.
5. Lawyers have a duty to the administration of justice, which includes bringing an independent judgement and providing appropriate advice as to the effect of a plea. There is nothing on the face complaint that the Practitioner did not do so. It is a matter for the client to enter his or her own plea.
6. Counsel has a duty to conduct proceedings in the interests of the client. Again there is nothing on the face of the complaint to suggest that the Practitioner did not act in accordance with that the duty during the hearing of the Complainant's bail application.
7. The Board is satisfied that the complaint as made does not disclose conduct that could amount to either unsatisfactory professional conduct or professional misconduct.
8. It follows that the complaint should be dismissed pursuant to s 433(1)(a) of the Act as lacking in substance.

Determination dated the 3rd day of August 2017.

Legal Profession Board of Tasmania

Per: 

Board Member

Please note that within 21 days after the date of this determination the complainant or the legal practitioner, the subject of the complaint may apply to the Disciplinary Tribunal or Supreme Court to have this matter heard by the Disciplinary Tribunal or Supreme Court and may make an application to the Disciplinary Tribunal or Supreme Court to stay the determination pending the finalisation of such an application.

Please be aware that an application made to either the Disciplinary Tribunal or Supreme Court may, in the event that application is unsuccessful, result in a costs order against you. Accordingly, it is recommended that independent legal advice is sought prior to making such an application.

Any application to the Disciplinary Tribunal must be in accordance with the form prescribed under the Legal Profession (Disciplinary Tribunal) Rules 2010 (see <http://www.lpbt.com.au/policy-and-guidelines/>).

The contact details of the relevant bodies are as follows:

Disciplinary Tribunal Secretary Mrs Maria Dwyer, Ogilvie Jennings: 6272 6860

Supreme Court, General Enquiries: 1300 664 608