

Legal Profession Board of Tasmania

Medium Neutral Citation: **COMPLAINANT v A PRACTITIONER [2017]
LPBT 44**

Heard: 2017

Determination date: 2017

Jurisdiction: Legal Profession Board, Tasmania

Before: Mr K Pitt QC (Chairman)
Mr G Jones (Legal Member)
Mr A Mihal (Legal Member)
Ms J Paxton (Community Member)

Determination: The complaint be dismissed pursuant to section 433(1)(a) of the *Legal Profession Act 2007*.

Catchwords: **PROFESSIONS AND TRADES- Lawyers-
Complaints and Discipline- Professional
misconduct and unsatisfactory professional
conduct- Solicitor's fees- Disclosure of costs-
Exceptions to requirement to disclose costs**

Legislation: *Legal Profession Act (Tas) 2007* – ss 291; 295(1);
433(1)(a)

Category: Determination

Parties: (Complainant)
(Practitioner)

File Number(s): 2017/44

REASONS FOR DETERMINATION

Background

1. This matter comes to the Board by way of complaint received on 26 April 2017.
2. The Complainant's mother, , inherited \$300,000 from her mother's estate ('the inheritance') in late 2013. The Complainant discovered in January 2014 that she had gambled \$35,000 of the inheritance.
3. In order to help her and to protect the remaining inheritance the Complainant with the mother opened an account with a financial institution which required more than one signatory to withdraw funds.
4. In late 2015 the Complainant became aware that of the original funds deposited, only \$5,000, remained in the account.
5. The Complainant lodged a complaint against the financial institution with the Financial Ombudsman Service ('FOS'). In mid 2016 the FOS finalised their investigation of the complaint and made a determination which was primarily in favour of the financial institution. FOS did however recommend that the financial institution pay \$1,500 each to the Complainant and another signatory to the account for 'non-financial loss'.
6. The Practitioner works in a law firm with a focus on commercial litigation.
7. The Complainant initially contacted the Practitioner in mid 2016, and then forwarded the relevant FOS complaint documentation to the Practitioner for review.
8. Around a week later the Practitioner and the Complainant discussed the case.
9. Two weeks later, after having reviewed authorities referred to in the material sent to her by the Complainant, the Practitioner wrote an extensive letter of advice. Ultimately the Practitioner recommended that the Complainant not start legal proceedings against the financial institution, but first write to them outlining the discrepancies in the case law used in the FOS decision. With that letter of advice the Practitioner enclosed the law firm's fee agreement.
10. The Practitioner did not hear from the Complainant so after some time wrote to the Complainant and enclosed a tax invoice for the work performed to date. She advised that she would proceed to close the file unless she heard further from the Complainant.

The Complaint

11. The complaint was received on 26 April 2017.
12. The complaint alleges the Practitioner: -

Failed to provide a disclosure of her costs during the initial meeting with the Complainant or at any time before providing written advice in circumstances where the Practitioner has charged the Complainant \$1,338 plus disbursements.

Relevant legislation and the law

13. The Practitioner is an Australian legal practitioner within the meaning of section 6 of the Act.
14. Section 291 of the Act sets out the requirements for the disclosure of costs to a client. Disclosure must be made in writing before or as soon as practicable after the law practice is retained in the matter.
15. However, section 295 of the Act provides an exception to the obligation of disclosure. It states:

'295. Exceptions to requirement for disclosure

- (1) *Disclosure under section 291 or section 293(1) is not required to be made in any of the following circumstances:*
 - (a) *if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher);*
.....'

16. The Practitioner's total legal costs did not exceed \$1,500. Accordingly the exception to the requirement for disclosure applied.
17. It follows that the complaint should be dismissed pursuant to s 433(1)(a) as misconceived.

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 misconceived.

Determination dated the 29th day of August 2017.

Legal Profession Board of Tasmania

Per:



Chairperson

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