

Legal Profession Board of Tasmania

Medium Neutral Citation:	COMPLAINANT v A PRACTITIONER [2018] LPBT 43
Considered / Heard:	2018
Determination date:	2018
Jurisdiction:	Legal Profession Board, Tasmania
Before:	Mr K Pitt QC (Chairman) Mr G Jones (Legal Member) Mr A Mihal (Legal Member) Mr D Lewis (Legal Member) Ms J Paxton (Lay Member) Mr P Dane (Lay Member)
Determination:	The complaint is dismissed pursuant to section 433(1)(a) of the <i>Legal Profession Act 2007</i> on the basis it is misconceived or lacking in substance.
Catchwords:	PROFESSIONS AND TRADES- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- allegations of using threatening and inappropriate language to the other lawyer.
Legislation:	<i>Legal Profession Act (Tas) 2007</i>
Category:	Determination
Parties:	(Complainant) (Practitioner)
File Number:	2018/43

REASONS FOR DETERMINATION

Background

1. This matter comes to the Board by way of a complaint received on 21 March 2018.
2. The Complainant is separated from her former partner. She engaged a lawyer to represent her in property settlement matters.
3. Her former partner engaged the Practitioner to represent him in the property settlement matters.
4. On the limited information known, agreement appears to have been reached between the parties with respect to a property settlement.
5. It appears the Practitioner was preparing the documents to effect formal settlement.
6. For reasons unknown to the Board, it appears instructions about settlement were not being conveyed by the Complainant's lawyer to the Practitioner in a timely way.
7. Ultimately the Practitioner wrote to the Complainant's lawyer to progress the matter. His letter was forwarded to the Complainant.

The Complaint

8. The Complaint alleges the Practitioner, by letter, indicated that he would get his client to 'hassle' the Complainant in circumstances where the use of the word was inappropriate, threatening and unprofessional.
9. The Board has considered submissions from each of the parties and the relevant supporting documentation.

Relevant legislation and the law

10. The Practitioner is an Australian legal practitioner within the meaning of s 6 of the *Legal Profession Act 2007* ('the Act').

11. Section 420 of the Act defines unsatisfactory professional conduct:
***unsatisfactory professional conduct** includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.*
12. Section 421 of the Act defines professional misconduct:
***professional misconduct** includes –*
 - (a) *unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and*
 - (b) *conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.*
13. The Board notes that the Practitioner has conceded the use of the word 'hassle' was inappropriate and apologised to the Complainant through his submissions.
14. In context it is clear that his intention was to convey that his client was to follow up or to remind the Complainant to contact her lawyer to finalise settlement.
15. In the whole of the circumstances the Board is unable to find that the word 'hassle' was intended to be, nor could be read as, threatening or intimidating to an ordinary person. However, the Board recognises that the Complainant felt the terminology did convey a threat to her.
16. Noting the apology and the informal nature of the letter, the Board is satisfied that the use of the word is not such that it could constitute unsatisfactory professional conduct or professional misconduct.
17. It follows that the complaint must be dismissed.

DETERMINATION

The Complaint is summarily dismissed pursuant to section 433(1)(a) of the *Legal Profession Act* 2007 as it is misconceived or lacking in substance.

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