

Legal Profession Board of Tasmania

Medium Neutral Citation:	COMPLAINANT v A PRACTITIONER [2018] LPBT 45
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 that it is misconceived.
Catchwords:	PROFESSIONS AND TRADES- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- allegations of failing to account for money paid into trust for fees- allegations of failing to provide adequate costs disclosure.
Legislation:	<i>Legal Profession Act (Tas) 2007 s 433(1)(a).</i>
Category:	Determination
Parties:	(Complainant) (Practitioner)
File Number:	2018/45

REASONS FOR DETERMINATION

Background

1. This matter comes to the Board by way of a complaint received on 5 March 2018.
2. The Complainant first met with the Practitioner in late August 2017 for the purpose of engaging him to act in relation to criminal charges.
3. The following day the Practitioner wrote to the Complainant providing costs disclosure information and requested that the Complainant pay \$2,000.00 into trust as a deposit on costs.
4. During the course of the matter, the Practitioner issued three tax invoices as follows:
 - i. \$2,066.35 including GST and disbursements;
 - ii. \$2,073.50 including GST and disbursements;
 - iii. \$486.20 including GST and disbursements.
5. The Complainant no longer instructs the Practitioner.

The Complaint

6. The Complaint alleges the Practitioner:
 - A. Took \$2,000.00 from the Complainant by way of deposit in trust but has failed to apply those funds towards outstanding legal fees; and
 - B. Failed to provide written costs disclosure to the Complainant in circumstances where total legal fees charged are \$4,626.05.
7. The Board has considered submissions from each of the parties and the relevant supporting documentation.

Relevant legislation and the law

8. The Practitioner is an Australian legal practitioner within the meaning of s 6 of the *Legal Profession Act 2007* ('the Act').
9. 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.

10. 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.*

Consideration of the Complaint

- 11. The evidence provided to the Board makes it clear that the Practitioner sent a letter to the Complainant the day after their initial meeting with costs disclosure information which included an estimate of legal fees of between \$750 and \$7,500. That letter also requested that \$2,000 be paid into trust as a security deposit for fees.
- 12. The Complainant paid the money into trust a few days later, in accordance with the request.
- 13. It is clear that the \$2,000 paid into trust was applied to the outstanding legal fees on the day the first tax invoice was issued. However, the tax invoice does not indicate that funds were transferred from trust in part satisfaction of the amount invoiced. The law practice issued a reminder notice a month later which showed that \$66.35 remained outstanding in respect of the first tax invoice, but did not specifically state that the balance of the account had been paid from funds in trust.
- 14. The Complainant's confusion and the resulting complaint is understandable but the complaint is misconceived in its entirety and 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.

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