The Legal Services Commissioner
Understanding the Complaints Process

Jennie Pakula, Manager, Complaints Resolution and Investigations

Introduction: The Legal Services Commissioner and Complaints about Lawyers

Since late 2005, when the Legal Services Commissioner became the single gateway for complaints about legal practitioners, it has received 12375 complaints, averaging about 2000 per year. We also take some 5000 enquiries per year, some of which translate into formal complaints.

Our mandate & our approach

The LSC's purposes in handling complaints are set out in Chapter 4 of the *Legal Profession Act 2004* as follows:

4.1.1 Purposes

The purposes of this Chapter are—

(a) to provide a scheme for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of legal services and the public generally;

(b) to promote and enforce the professional standards, competence and honesty of the legal profession;

(c) to provide a means of redress for complaints about the legal profession.

Within this general mandate, there is enormous scope for our activities, and quite a level of diversity. On the sharp end, there is the scheme to discipline the legal profession, effectively to ensure the 'bad apples' are not permitted to stay within the profession, and to try to bring those that are straying off the path back on to the straight and narrow. We recognise that the true 'bad apples' are very much in the minority and there is a real sense in which we must do everything we can properly do to remove such people from the profession. For example, this year for we applied for a VCAT order recommending the removal of a practitioner from the Roll, which was successful. In this case, the practitioner had a very long and serious record, which made this step essential in protecting the public.

In lesser conduct issues there is, however, much room to forgive and assist, recognising that in many cases non-compliance can arise out of broader issues to do with what is going on in the practitioner's life or the practitioner's need for some direction and practice support. As such, it is common for Commissioner and Legal Services Board staff to work with practitioners to assist them to rectify problems that have built up over time and in working out how to manage their practices better.

We recognise also that the vast majority of complaints are really about consumer issues and the focus here will not be on discipline but on reaching a resolution that will address the client's concerns and give the practitioner some direction on how they might avoid such problems in the future. In short, we seek to use our resources wisely, reserving our 'fire power' for the serious issues.

We also seek to educate the consumer of legal services and the profession – in sessions like this and in our increasing use of both conventional and social media. We are in a unique position to see the sorts of things that commonly go wrong in the solicitor-client relationship and over the next few years we will continue to work on getting that information into the public arena for discussion. In this way we hope not only to address appropriately the complaints that come to us, but also to prevent many complaints from arising in the first place.

What do people complain about?

The most common complaints will not surprise you. One of the most common is over-charging, usually tied in with a series of service issues – that is, people feel they got poor value for the large amount of money spent. They complain that they didn't know what was going on, they didn't hear regularly from their solicitor, they were confused by the advice, they got a poor outcome, the matter was delayed. In many cases, the things they complain about were not necessarily indicative of poor service, but they show us the enormous importance of discussing with clients the likely time line for their transaction or proceeding, when they can expect to hear from you, what the range of possible outcomes would be and why, and what factors might cause their costs to blow out. To sum up, it is incredibly important to manage expectations and to communicate effectively. It is not that you must be available and take the call every time the client rings – but you do need to give them an effective explanation that will hopefully obviate the need for them to call too many times.

Sometimes the overcharging is simply that – for example, I recently saw a bill where a practitioner charged one unit - $40 – for reading an email message her secretary sent her to say the client had called. And there were 8 of those charges - $320 – incurred in 2 days.

Complaints most commonly arise from unsophisticated clients who do not deal regularly with the legal system. The context is usually highly emotional matters such as family law, probate, conveyancing, and small commercial transactions – often buying or selling a small business. Again, this underlines the incredible importance of managing clients' expectations and making absolutely sure they understand what you are advising them.

How does the LSC deal with complaints?

The Act divides complaints into two categories: Disciplinary and Civil Complaints, or a mixture of both. However, the reality is that there is a third category of complaints that are neither disciplinary nor civil.

A *Disciplinary Complaint* is defined as follows:

> **4.2.3 Disciplinary complaints**
>
> (1) A ***disciplinary complaint*** is a complaint about conduct to which this Chapter applies to the extent that the conduct, if established, would amount to unsatisfactory professional conduct or professional misconduct.

From this, it is evident that a disciplinary complaint needs to cross a threshold before it will be investigated: the conduct alleged would have to be something that, if proved, could amount to unsatisfactory professional conduct or professional misconduct. These are quite high standards.

"Unsatisfactory professional conduct" is defined in s.4.4.2 of the Act as follows:

> ***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.

This standard is beyond a mere mistake or oversight, and it is important to avoid the subjectivity into which this standard could so easily fall: it is the standard of a *reasonably* competent practitioner. While many complainants allege negligence, not all allegations will lead to an investigation, because not all negligence is a conduct issue. Particularly, it is not appropriate for the LSC to provide a second opinion on what advice should have been given at the time, particularly as we were not there at the time, we don't have all those facts at hand, and that many legal matters are inherently 'grey', meaning a range of possible advice may be given rather than one definitive answer. This would not, of course, be the case with a demonstrable error that had a significant impact on the complainants. For example, a solicitor advised an executor client that the will was invalid rather than subject to challenge where the witnesses sign with two different pens. He advised her to administer the estate in accordance with the rules of intestacy rather than in accordance with testator's wishes, which resulted in family conflict, delay and a major costs blow-out to a very modest estate.

Examples of unsatisfactory professional conduct would include:

- Some instances of conflict of interest that do not have serious consequences for the parties involved;
- Misleading correspondence to an opposing practitioner;
- Failure to advise about the expiry of a limitation period;
- Significant and obvious negligence.

"Professional misconduct" is defined as follows:

> For the purposes of this Act—
>
> ***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.

Note that it is an inclusive definition. The common law standards of misconduct continue to apply, particularly that the conduct would be of the kind viewed by peers as 'disgraceful and dishonourable'. Only a few very serious cases could fall into this category. Recent examples include:

- Taking executor's commission without obtaining appropriate consent of beneficiaries;
- Failure to pay moneys earmarked for barristers' fees;
- Trust defalcations;
- Dishonest and fraudulent activity.

Once a complaint is categorised as 'disciplinary', the aim is to investigate and to establish whether there is sufficient evidence to make it reasonably likely that the Victorian Civil and Administrative Tribunal ("VCAT") would find the practitioner guilty of unsatisfactory professional conduct or professional misconduct.

Civil complaints are defined as follows:

4.2.2 Civil complaints and disputes

(1) A ***civil complaint*** is a complaint about conduct to which this Chapter applies, to the extent that the complaint involves a civil dispute.

(2) A ***civil dispute*** is any of the following—

(a) a dispute (***costs dispute***) in relation to legal costs not exceeding $25 000 in respect of any one matter—

(i) between a law practice or an Australian legal practitioner and a person who is charged with those costs or is liable to pay those costs (other than under a court or tribunal order for costs); or

(ii) between a law practice or an Australian legal practitioner and a beneficiary under a will or trust in relation to which the law practice or practitioner has provided legal services in respect of which those costs are charged;

(b) a claim that a person has suffered pecuniary losses as a result of an act or omission by a law practice or an Australian legal practitioner in the provision of legal services to the person, other than loss in respect of which a claim lies against the Fidelity Fund;

(c) any other genuine dispute between a person and a law practice or an Australian legal practitioner arising out of, or in relation to, the provision of legal services to the person by the law practice or practitioner.

(3) A civil complaint may be made about the conduct of a law practice or an Australian legal practitioner.

From this, you can see that a civil dispute is generally one between a solicitor and client – the exception to the rule being beneficiaries to estates or trusts, who can also dispute costs. I should note, also, that the 'other genuine dispute' category is not really as wide as it looks. Given that the dispute needs to be referred to VCAT for orders to be made should the resolution process fail, it has to be something about which VCAT can actually make orders – so it won't cover general gripes about such issues as poor communication and perceived rudeness.

There are many complaints that *do not fit either category*. They are often about a practitioner's behaviour that could not amount to unsatisfactory professional conduct or professional misconduct. Take for example:

- a practitioner being abrupt or insensitive;
- a practitioner urging a client – often for good reasons - to accept a settlement that they don't like;
- a practitioner giving advice that seems to the client unclear or not really to the point;

- Delay and communication issues that are annoying but insufficient to amount to a disciplinary breach.

This third, large category of complaint is not described by the Act in any significant way. The big question the Commissioner must deal with is, how do we handle complaints that do not strictly fit the categories set out in the Act?

One option is to summarily dismiss them, but that would result in about half our complaints being dismissed without further action. This would be a failure in relation to the third aim of the Commissioner as set out in s.4.1.1 of the Act – which is to provide a means of redress for complaints about the legal profession.

Another option is to take a very generous view of what might constitute a disciplinary complaint and subject it to a full-blown investigation – but in the past that resulted in delays leading to an inevitable dismissal of the complaint, a situation with which neither complainant nor practitioner were happy.

A third option is to simply deal with such complaints in a way that will bring about the most satisfactory solution for the parties. This approach inevitably involves the use of ADR techniques, and very much brings to bear an ADR mindset. Where the issue is service related, an investigation will not resolve the matter in anyone's mind. A complainant generally does not care whether the Tribunal would be likely to find a practitioner guilty of a disciplinary breach. They do, however, want to have their say, be understood and recognised, and in certain circumstances, receive some kind of redress, such as a payment – in many cases token – or an acknowledgement or apology from the practitioner. This has been the strategy behind the formation of our Rapid Resolution Team (RRT) some eighteen months ago.

The RRT is closely related to our Dispute Resolution Team (DRT) in that both are focused on resolution rather than investigation. While the DRT tends to concentrate on matters clearly falling within the parameters of a civil dispute under the Act, the aim of the RRT has been to work creatively and effectively with those uncategorised complaints. The RRT aims to take general disputes, service-related complaints and matters that clearly indicate summary dismissal, and to deal with them as quickly and efficiently as possible – meaning that even in a matter where there is nothing that can be done by way of orders, disciplinary findings or referral to VCAT, some effort is made to resolve any presenting issue capable of resolution, or to give a personal explanation of why the complaint cannot be investigated.

Ways of dealing with complaints

In any one day, the office receives 8-10 complaints. They are analysed as to the seriousness and credibility of the allegations – the more serious go straight to investigation. This category would account for 15-20% of complaints received. If the complaint indicates a dispute clearly within jurisdiction – say for a bill from October for $3000 – they go to the DRT. If the complaint indicates something that could be resolved with some minor investigation and resolution – it goes to the Rapid Resolution Team. The last two categories account for about 65- 70% of complaints. Finally, there are complaints that are clearly misconceived, need to go elsewhere or for some other reason will be dismissed almost immediately – about 10-15%. These are spread around the complaints handlers generally, with the more difficult ones requiring a clear explanation going to more senior staff.

What can I expect if the complaint is investigated?

It should be noted that the scope of the investigation is determined by the LSC, not by the complainant. Many complainants may focus on an issue that is not of primary importance as a conduct issue, but may have more to do with their substantive case. For example, it is common to receive complaints involving a settlement of a family law or personal injury matter, where the complainant's primary concern is what they think is an inadequate outcome. However, they may also raise complaints about not having been given adequate costs disclosure, or not understanding how the practitioner has dealt with their settlement money. The LSC is unable to revisit issues as to the adequacy of the settlement as this will generally not involve any breach of the appropriate standards and will not raise a disciplinary issue. However, we may be very concerned to ensure practitioners are complying with their obligations under that Act to disclose the way costs will be charged, and to handle their clients' money in a transparent and compliant way. The investigation would, therefore, focus only on those issues.

The investigation process is a wide ranging one, involving analysis of the conduct allegations throughout the process in light of the evidence that comes to hand. Evidence can be gathered in many ways. Primarily the complainant is asked to provide documentation and statements and the practitioner is asked to provide a full written explanation, including documentary evidence. It is common for the LSC to review the file and to interview the practitioner, including making visits to the practitioner at their office. We have some powers of compulsion under s.4.4.11 which apply to the practitioner, to other practitioners not subject to complaint, and to certain banks (Authorised Deposit-taking Institutions). Practitioners cannot refuse to comply on the basis of either confidentiality or self-incrimination, and a failure to comply can amount to unsatisfactory professional conduct or professional misconduct. It is, however, unusual for us to prosecute for such a breach; our emphasis is more on assisting practitioners to comply, including by visiting their offices and taking statements.

Once the investigation process is finalised, a decision must be made in accordance with s.4.4.13 of the Act:

4.4.13 What happens after an investigation is completed?

(1) After an investigation has been completed under this Division, the Commissioner must deal with the matter in accordance with this section.

(2) The Commissioner must apply to the Tribunal for an order under Division 4 in respect of the Australian legal practitioner the subject of the investigation if the Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner guilty of professional misconduct.

(3) If the Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner guilty of unsatisfactory professional conduct, the Commissioner may—

(a) apply to the Tribunal for an order under Division 4 in respect of the practitioner; or

(b) with the consent of the practitioner, reprimand or caution the practitioner; or

(c) take no further action against the practitioner if satisfied that—

(i) the practitioner is generally competent and diligent; and

(ii) there has been no substantiated complaint (other than the complaint that led to the investigation) about the conduct of the practitioner within the last 5 years.

(4) If the investigation arose from a complaint under which the complainant requested a compensation order, the Commissioner may require the practitioner to pay compensation to the complainant as a condition of deciding under subsection (3) not to make an application to the Tribunal in respect of the practitioner.

(5) If the Commissioner is satisfied that there is no reasonable likelihood that the Tribunal would find the practitioner guilty of professional misconduct or unsatisfactory professional conduct, the Commissioner must take no further action against the practitioner.

If it is likely that a disciplinary finding will not be made, we will write to the complainant foreshadowing that result and giving one last opportunity for them to have their say and provide any further information.

If it is likely that a disciplinary finding will be made, we will write to the practitioner to give them a final opportunity to make submissions as to what the decision should be. This is a requirement of natural justice and is a letter known by us as a 'Murray' letter.[1] For example, if the result was likely to be unsatisfactory professional conduct, a practitioner may wish to submit a statement as to why they are generally competent and diligent, therefore why we should take no further action. This might be established by client testimonials, references from other practitioners, and by our general observation of how the practitioner conducted the file – for example, is it well organised, is there evidence of analysis and prompt responses to the client, and so on.

If there is a finding of likely professional misconduct, we must prosecute by applying for orders at VCAT. The range of orders can include fines, costs orders, restrictions on the practising certificate including returning to supervised practice, orders that education be undertaken, suspension of the practising certificate for a period, or, in the most extreme cases, a recommendation to the Supreme Court that the practitioner's name be removed from the Roll.

How does the LSC deal with civil disputes?

As set out above, the Act provides for the resolution of certain categories of civil dispute between solicitors and clients. These provisions mirror the pioneering provisions set out in the *Legal Practice Act 1996.* As such, the LSC and its predecessors have for some time been engaged in assisting parties to resolve disputes, particularly over costs.

It is a unique feature of the Victorian legislation that the costs dispute process can only go ahead if the complainant lodges with the LSC any outstanding costs (with provision for dispensation if lodgement would cause undue hardship). While this concept had been included, with modifications, in the draft national profession law (s.5.3.11), unfortunately it seems now to have been dropped. It works is by money being lodged in an interest-bearing account. If the dispute does not settle, the parties have the option of applying to VCAT for resolution and division of the moneys – if neither does this, the money is paid to the practitioner. If the complainant withdraws the complaint, the money is paid to the practitioner; if it settles, the money is divided according to the settlement agreement.

The beauty of this provision is that it provides a great incentive for parties to negotiate and settle. For the practitioner, the money is there and available without the need to sue the former client – it is in their interests to compromise for the sake of the 'bird in the hand'. For the client, a compromise is also attractive, as the alternatives involve either the risk and stress of going to VCAT or the whole amount being paid to the practitioner.

[1] From the case *Murray v. Legal Services Commissioner (NSW)* [1999] NSWCA 70

It is also important that once the costs dispute has been lodged with the LSC, the practitioner may not sue the complainant for the costs (s.4.3.2), thus bringing them to the negotiating table with some force!

It is interesting that when complainants approach the LSC with a costs dispute, it is usually with a rights-based mindset. As such, we are asked by complainants to reduce or cancel a bill, or order that particular items be removed. The complainants' perception is that the LSC is like a court, and that we can order the practitioner to amend their bill. Similarly, practitioners often come to the process suggesting that the bill be assessed to establish whether the work done on the file justifies the bill – again, an 'objective' rights-based approach where an umpire is called upon to make a binding decision about the dispute. However, the reality is that most complainants are not really concerned with whether a costs assessor would agree with the bill – their issues are generally service related. It is not uncommon to receive a complaint that goes into great detail about the poor service and confusing advice given, failures to return phone calls in a timely manner or at all, the practitioner's insensitivity and poor social skills etc – to summarise, "They did a bad job, I'm not happy and I'm not paying for it."

It is very important at this stage to establish that our role is not the role of the umpire. Our aim is to provide a fair process that will enable the parties to resolve the dispute themselves. If, after making fair attempts to resolve the dispute, we form the opinion that this cannot be done, the parties are given a letter setting out this decision and giving them the right to approach VCAT to make an application for resolution of the dispute within the next 60 days.

The Act gives the LSC broad power to resolve disputes:

4.3.5 Commissioner to attempt to resolve civil dispute

(1) The Commissioner must attempt to resolve a civil dispute that is the subject of a civil complaint and may take any action he or she considers necessary to assist the parties to reach agreement.

(2) Without limiting subsection (1), the Commissioner may—

(a) refer a civil dispute for mediation under Division 3; or

(b) in the case of a costs dispute—arrange for a non-binding assessment of legal costs.

(3) For the purposes of an assessment referred to in subsection (2)(b), the Commissioner may require the law practice or Australian legal practitioner concerned to provide any relevant documents or information.

(4) Evidence of anything said or done in the course of attempting to resolve a civil dispute is not admissible in proceedings before the Tribunal or any other proceedings relating to the subject-matter of the dispute.

(5) This section does not apply if—

(a) the Commissioner has dismissed the complaint in respect of the dispute under section 4.2.10 or 4.3.3(3); or

(b) the Commissioner considers that a civil dispute is unlikely to be resolved, or is not suitable for resolution by the Commissioner.

Our usual approach is one of telephone shuttle mediation. The complaint is summarised in writing to both parties – the complainant being asked to confirm if we have or have not understood their issues – and the process is explained. From there, our dispute resolution team members call both parties to get the negotiation under way.

The first telephone call is generally quite a long one, reflecting the issue exploration that needs to be undertaken. In many cases, it is important to talk through the presenting service issues, as complainants will come to us demanding that disciplinary action be taken. However, the decision to undertake a disciplinary complaint investigation is the Commissioner's to make, not a right of the complainant. Nonetheless, it is vital to understand the complainant's issues and to talk them through. Also, it is important that we understand accurately what the complainant hopes to achieve by making the complaint. If the complainant wants something we can't provide, for example to reopen their case, it is important that they are given a more realistic understanding of what the complaint process can achieve as soon as possible. This call is also important in establishing rapport with the complainant and understanding the LSC's role as a neutral third party seeking to resolve their matter.

By far the largest category of law from which complaints arise is Family Law. This area of law provides a consistent 20 – 25% of complaints each year, and complainants are generally suffering from the impact of the divorce and related matters. When they are unhappy with the legal process and with the result, there is a strong desire to obtain some kind of redress. As the LSC is a body to which people can bring their complaints, it is not uncommon to transfer much of the angst arising out of the personal circumstances – about which nothing can be done – to a practitioner whom the LSC can punish. It is therefore extremely important to unpack these issues and enable complainants to understand what the practitioner's role has been in the entire process.

When speaking to the practitioner in the first instance, there is often a fair bit of heat to endure on the part of the complaint handler. It is not uncommon for a practitioner to state that the complaint is utterly unjustified, that they 'busted their chops' for this ungrateful person, they are entitled to every cent and they will not negotiate. However, listening, exploring and time will often take the heat out of the practitioner's response. The DRT members work hard at establishing rapport with practitioners and helping them to see that our function is not to punish, but to help. Practitioners quickly see the merit in avoiding the cost and stress of VCAT and understand that our aim is not to advocate for the complainant, but to provide a neutral and mutually beneficial process.

The next stage is to discuss with the parties the types of options that are open to them, bearing in mind what the LSC can and cannot do with their complaint. There are many different approaches to obtaining information and explanations – for example the complaint handler reading the file or requesting specific responses from the practitioner to be given to the complainant – not a formal written explanation in response to a disciplinary investigation, but an explanation with a view to helping the complainant understand the circumstances and resolve the dispute. Sometimes a practitioner will send in a quite inflammatory letter. We don't pass these on as a general rule; however we will either summarise the essence of the explanation in a letter we write to the complainant, or we will ask the practitioner to do a judicious edit, bearing in mind the purpose of the letter.

An informal, non-binding costs assessment can be obtained by the LSC, although this is generally something we do only if both parties want an independent third party to make that judgment call. Even then, the parties are not bound by the assessment, but it often provides a good starting point for more focussed negotiation.

A lot of reality testing goes on, including discussing with the parties their best and worst alternatives to a negotiated outcome. Here, it is important to discuss what happens should the matter proceed to VCAT, especially from the complainant's point of view. Complainants need to understand that if they proceed to VCAT and the member does not significantly reduce the bill, they run the risk of having a costs order made against them – see for example *Larking v McDonald Murholme* (Legal Practice) [2010] VCAT 1122 (17 June 2010); conversely, practitioners can be ordered to pay the applicant complainants' costs – see for example *Leong v J P Sesto & Co & Ors* (Legal Practice) [2010] VCAT 367 (29 March 2010).

If no VCAT application is made by the complainant after the LSC decides that the matter cannot be settled by this office, the practitioner will simply need to wait another 60 days before the whole sum

of money is paid to them, and the complainant pays the entire amount originally demanded. This possible outcome is an important factor that encourages compromise by the parties.

If settlement is reached, the final stage is for the LSC to prepare a settlement agreement reflecting the terms of agreement. While it is usually the case that the main term of the agreement is the division of moneys held on trust, other terms can be included, such as handing over client files, apologies and so on. The agreement can be certified and registered with the Magistrates Court should either party wish to enforce it.

In the end, the majority of disputes do settle within our office. Very few disputes are referred to formal mediation as it is generally only appropriate where the issues are complex and the money at stake is quite significant.

The DRT is keen to continue to think through the best means of dealing with complaints. We are particularly keen to increase the amount of face-to-face contact, and are beginning to develop ideas for in-office 'mini-mediations'.

How can I expect the LSC to deal with complaints involving informal disputes and minor conduct issues?

The Rapid Resolution Team is an innovation of the LSC arising out of a review of our complaints handling process in early 2010, particularly the way we handle those troublesome uncategorised complaints. A special characteristic of the team is its staff – all experienced, older practitioners armed with extensive knowledge and wisdom, excellent people skills, authority and common sense.

The matters that are referred to the RRT are many and varied. For example,

- A dispute that may be technically outside the civil dispute function may look resolveable and as such, is given to the RRT for the attempt. Parties are told that the dispute is being treated informally – the consequence being that if the dispute is not able to be resolved, the parties cannot be referred to VCAT, and the complaint will be dismissed;
- Some matters have possible disciplinary aspects to them but include elements that can be resolved, for example where the dispute could be settled by a refund of fees. In this case, along with the resolution, the practitioner may, as part of the settlement, be given a warning or even a formal reprimand about the conduct issues that have taken place;
- Disputes between practitioners – covering issues of tactics in litigation, discourtesy and issues between former partners;
- Communication issues that could be resolved by an explanation or apology, including allegations of rude or insensitive behaviour;
- Ethical questions that could be resolved, such as possible conflicts of interest or delays in complying in undertakings;
- Allegations that could be serious, for example a failure to account, but could be cleared up by enquiries being made, for example the practitioner being contacted and asked to provide trust account statements. If the concerns are not allayed at this point, the complaint is passed on to the investigation team for a more formal treatment. However, if the concerns are satisfied, the complainant is often happy to withdraw the complaint;
- Complaints regarding settlements with which the complainant is unhappy, or allegations of poor advice where this is not really apparent on the face of the material. In such cases, some explanation is sought, but the complainant's expectations of the consequences of our enquiry must be managed very carefully. In most cases, the complaint will end up being dismissed, although the complainant will generally have some benefit from a better

understanding of the outcome and assurance from an experienced person that what happened was not out of the normal range of outcomes.

It is important to note that no 'trade-off' is possible in relation to more serious disciplinary allegations. If the allegation fits the definition of a disciplinary complaint, it generally should be investigated. If the allegation is made out, appropriate disciplinary action must be taken in accordance with the Act.

Anecdotally, the RRT initiative shows a high level of satisfaction from both a complainant and practitioner point of view. Many matters that may have been either dismissed outright, or investigated and then dismissed, have been closed quickly and with a good outcome for both parties. A high level of satisfaction results from

- The matter being attacked quickly and some resolution reached (be it a payment of money, or an explanation, or resolution of the presenting problem, such as a file being handed over);
- The telephone or email being the primary means of communication, keeping formal correspondence to a minimum;
- The file being reviewed and assessed quickly by an experienced practitioner often gives an independent insight to a complainant;
- Practitioners having confidence in the experience and understanding of the team.

Many of the techniques of the RRT are similar to those employed by the Dispute Resolution Team. Exploration of the parties' issues is an important first step, as is enabling the parties to understand what the LSC can and cannot do in dealing with complaints. Again, a process of shuttle mediation is common, and sometimes face-to-face mediations can take place in either a full-blown or 'lite' version. Further, the RRT officers commonly meet with parties to discuss the issues and manage complainant expectations, meet with practitioners in their offices and review the files in question, and/or obtain some explanation to assist the complainant. A common outcome is for the complaint to be withdrawn on the basis of a settlement reached between the parties.

In many ways, the use of ADR techniques is the only appropriate way to deal with many complaints. People who make complaints are usually quite aggrieved, sometimes seriously so. If their complaint is not going to establish a disciplinary breach, it is insulting to them to simply dismiss it or subject it to an investigation that will inevitably result in a dismissal. The message that is sent by that process is that their concerns are minor and they are wrong to be upset. However, a process that enables them to be heard, to get across their disgruntlement and for that to be acknowledged, will go a long way in dealing with their concerns.

Conclusion

Should you ever be subject to a complaint, it is important not to think the worst. The LSC is staffed by sensible, experienced people with a clear capacity to exercise judgment as to what is and is not a serious issue, and who will seek to give both parties an opportunity to be heard. In the vast majority of cases, there is an opportunity to resolve issues.

If a disciplinary issue arises, it is important to seek help and advice at an early stage. You could approach a senior practitioner within your local law association, or your professional association if you don't feel comfortable raising the issue within the firm. A willingness to accept correction goes a very long way with this office, as it does with VCAT should the matter go that far.

It is important also to establish networks where you can seek advice and support, particularly if you are in sole practice or a small firm. There is much wisdom and help available within the ranks of the profession and this can go a long way in helping you not only to avoid complaints, but to be as the most effective lawyer you can be.