

Episode 34: Summary

Episode name: Managing Complaints against Lawyers

Guest(s): Roger Gimblett

What area(s) of law does this episode consider?

Roger Gimblett, Complaints Manager at the Office of the Legal Services Commissioner, discusses the complaints process at the OLSC and what lawyers can do to avoid having a complaint or disciplinary action made/taken out against them and how best to handle them in the case that one is nevertheless made, meritorious or otherwise.

This episode looks at the *Legal Profession Uniform Law 2015* (NSW) and the rules made under it, and the way its provisions are enforced using the disciplinary processes.

Why is this topic relevant?

The OLSC receives upwards of 2,500 formal complaints each year, and almost every lawyer will be the subject of a complaint at least once in their professional career - whether the complaint is made by a client, another lawyer, or even another lawyer's client. It's important to be aware of the complaints process and the expectations of a solicitor involved in one, so you can be prepared to resolve it quickly and efficiently, and mitigate the stresses that come with it.

What legislation is considered in this episode?

The OLSC is an independent statutory authority. Under the *Legal Profession Uniform Law 2015* (NSW):

- anyone has the right to make a complaint against a lawyer;
- the OLSC must seek to resolve complaints as quickly and as efficiently as possible; and
- the OLSC can serve solicitors with consumer cautions and notices to respond or produce, even in consumer (i.e. not disciplinary) matters.

Part 5.2 of the *Legal Profession Uniform Law 2015* (NSW): covers the complaint process, including who can make a complaint (s 266), the investigation of complaints (division 3), and distinctions between consumer and disciplinary matters.

Section 296 of the LPUL: Defines 'unsatisfactory professional conduct', which includes conduct of a lawyer 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 lawyer.

Section 297 of the LPUL: defines professional misconduct, which includes unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence and conduct of a lawyer 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 lawyer is not a fit and proper person to engage in legal practice.

What are the main points?

- The role of the Office of the Legal Services Commissioner is to function as co-regulatory body with the purpose of improving and maintaining community satisfaction with the legal services industry.

- All formal complaints against solicitors or barristers must pass through the OLSC where they will be appraised and either resolved internally or sent to the Law Society Professional Standards Department or to the Bar Association.
- The OLSC has an inquiry line service which deals with thousands of inquiries a year and is the first point of contact with the Office for many matters before a formal complaint is lodged.
- The OLSC informs solicitors of any and all complaints concerning them, regardless of the merits of the complaint. The solicitor or barrister in question will always be given the opportunity to respond and is encouraged to respond as quickly as possible.
- Not every complaint about a solicitor or barrister is made by a client. Under section 266 of the Uniform Law, anyone can make a complaint about a lawyer. Persons other than clients who tend to initiate or co-initiate a complaint include lawyers of opposing parties, self-represented litigants and third parties to a matter.
- If there is no client-solicitor relationship or exchange of legal services present the OLSC cannot treat the complaint as a consumer matter. It could only possibly be considered if the subject of the complaint is serious enough to raise a disciplinary issue.
- There are some areas of the law where lawyers are more likely to receive a complaint than others, for example criminal and family matters are more likely to attract complaints. Typically, due to the extended and often emotionally fraught relationships between client, solicitors, and other parties in those areas. However, it is rare for a lawyer to go their whole career without a single complaint, meritorious or otherwise.

What are the practical takeaways?

- Prevention is always better than a cure. The best way to avoid a complaint being made against you in the first place is to manage your clients' expectations as best as you can at the outset. Providing a reasonable timeline of events and avoiding the pitfall of overpromising results will help to ensure the client and any other party are in a common understanding for the duration of the relationship.
- Communication is the number one issue giving rise to complaints against lawyers. While email and instant messaging has revolutionised the legal services industry, it has simultaneously brought about the issue of hasty and sometimes emotionally charged communications between parties. To combat this, it is recommended that lawyers:
 - are mindful of their reliance on these tools; and
 - set a delay send function when sending emails and review text messages prior to sending. This communication is often relied on as evidence in the event of a complaint.

Show Notes

[The Office of the Legal Services Commissioner Annual Report 2019-2020](#)

[Guidelines for Dealing with Self-Represented Parties in Civil Proceedings](#)

[Equality Before the Law Benchbook – Section 10 – Self-Represented Parties](#)

[NCAT: Occupational Division](#)

[Hearsay Episode 4 with Jennifer McMillan – ‘Risky Business: Handling Professional Responsibility Complaints and Claims’](#)

[OLSC: Online Complaint Portal](#)