

Complaints matters - 2003 to 2004

By Josephine Stone, Complaints Investigations Officer for the Law Society NT

2003

1. The Law Society recorded a finding of unprofessional conduct against **Practitioner A** for failing to follow his client's instructions in that the practitioner failed to follow up the Health Insurance Commission for the release of funds following settlement in a personal injury case, in breach of Professional Conduct Rule 10A.5.

The practitioner was admonished.

The practitioner was also fined 10 penalty units (\$1100) for failing to respond in a timely manner to the Society's requests for information, in breach of Professional Conduct Rule 32.2.

2. The Law Society recorded a finding of unprofessional conduct against **Practitioner B** for rendering a final bill in the sum of \$1738 and subsequently rendering a substitute bill in the sum of \$8008 because of the client's "unreasonable attitude" in disputing the earlier bill, in breach of s.44(1)(a) of the Legal Practitioners Act. The practitioner was admonished.
3. The Law Society recorded a finding of unprofessional conduct against **Practitioner C** for failing to keep his client's advised of the progress of their case, failing to communicate and respond to faxes sent by the clients, failing to report to the clients orders made by the Court and failing to attend on a court appearance, in breach of (the old) Professional Conduct Rules 9.3, 9.4 and 9.7 and the general principles of conduct set out in s.44(1)(a) of the Legal Practitioners Act. The practitioner was fined 10 penalty units (\$1100).
4. The Law Society recorded a finding of unprofessional

conduct against **Practitioner D** for failing to communicate with his client in breach of Professional Conduct Rule 10A.2.

The practitioner was required to engage the services of risk management consultants to review and advise on the practitioner's management practices and a penalty of 20 penalty units (\$2200) was imposed.

5. The Law Society recorded a finding of unprofessional conduct against **Practitioner E** for acting against a former client (the wife) by accepting a retainer from the husband in a disputed matrimonial matter, where the practitioner had previously settled property orders for the husband and wife jointly, in breach of Professional Conduct Rule 3. No penalty was imposed. The complainant referred the matter to the Legal Practitioners Complaints Committee.

2004

6. The Law Society recorded a finding of unprofessional conduct against **Practitioner F** for breach of Professional Conduct Rule 10A.1 for failing to notify the complainant of the imminent change in the practitioner's office location, despite the fact that the complainant's matter was ongoing, until the very day the office closed for business in the old location. The practitioner was admonished.

The practitioner was also fined 7 penalty units (\$770.00) for breaching section 44 of the Legal Practitioners Act for writing a letter to the client in insulting and derogatory terms.

7. The Society recorded a finding of unprofessional conduct against **Practitioner G** for breach of Rule 10A.1 for failing

to advise the client of the costs of litigation. In the circumstances of the case no penalty was imposed.

8. The Law Society recorded a finding of unprofessional conduct against **Practitioner H** and **Practitioner I** for delay under Rules 10A.2 and 10A.5 for failing to pick up the fact in the complainant client's matter that the Writ, prepared by another firm of solicitors, had incorrectly named the defendant. The practitioners had carriage of the matter from March 2000, ascertained the error in March 2001, made contact with the correct defendant's liquidator in June 2001 but did not make application to the Court until November 2002 to correct the defect.

The practitioners were also held to have breached Rule 10A.7 for failing to advise the client of accruing costs (over \$15,000) during the life of the file. The practitioners were admonished. It was noted the firm ultimately did not bill the client for the accrued costs.

The partners of the firm were counselled about appropriate supervision of junior solicitors.

9. The Law Society recorded a finding of unprofessional conduct against **Practitioner J** for:
 - (a) Breach of Rule 1.1 and 10A.2 for failing to pursue recovery of costs awarded to the client. The practitioner was fined 5 penalty units (\$500).
 - (b) Breach of Rule 10A.1 for lack of communication in that the practitioner consistently failed to return the client's telephone calls. The practitioner was fined a further 5 penalty units (\$550).

continued page 28...

Dept of Justice fact sheet on changes to the Criminal Code

This is a NT Government fact sheet on changes that have been made to the Criminal Code.

Sexual relations and the age of consent

From 17 march 2004, changes to the Criminal Code made it an offence for anyone to have sexual relations with any person under the age of 16 years old.

Before this change to the law it was an offence to have sex with a girl under 16 years old, but the law also said that a person, Indigenous or non-Indigenous, would be excused from this offence if they were married to the girl.

In 1991 the Commonwealth

Marriage Act was changed, making 16 years old the minimum age for getting married for all but customary marriages. This meant that Indigenous men could still have sexual relations with a girl under 16 year if they were married according to customary law.

The new law

The new law says it is an offence to have sexual relations with any person (girl or boy) under the age of 16 years. The law does not restrict traditional or promised marriages, or the arrangement of these marriages, but it means that husbands and wives both need to be over 16 years old before they have a sexual relationship.

The reasons for change

The Northern Territory Government has a responsibility to ensure that all young people under the age of 16 have the same level of legal protection against sexual offences.

The new law means that young indigenous girls and boys are protected in the same way as non-Indigenous girls and boys, from sexual relationship that might cause them harm.

This fact sheet is available from the NT Government website at www.nt.gov.au/justice/graphpages/lawmake/changed.shtml①

Complaints matters - 2003 to 2004 cont...

10. The Law Society recorded a finding of unprofessional conduct against **Practitioner K** for breach of Rule 10A.1 for failing to adequately supervise a junior practitioner in a litigious matter. Penalty to be decided.
11. The Law Society laid charges with the LPCC against **Practitioner L** in September 2003 for a number of breaches of the Trust Accounting provisions of the Act, 14 in all. Twelve charges were upheld on a finding of professional misconduct by the LPCC with no penalty imposed (Dec 2004). The Law Society is appealing the decision of the LPCC in relation to penalty.①

Log on and check out the Law Society's new website at
www.lawsocnt.asn.au

Volunteers needed for March Red Cross Calling

The Asian earthquake and Tsunami disaster has shifted worldwide focus to the devastation in Asia and Australian Red Cross has been overwhelmed by the response. At home, Red Cross has continued to provide vital community services, every day, to the thousands of Territorians who rely on us every year. The annual Red Cross Calling Door Knock Appeal, which has always been generously supported by Territorians, raises the funds that continue to provide these vital local services.

The \$64,306.85 raised from last year's appeal went back into the Territory community, supporting local Red Cross programs including Telecross, the Breakfast Club, the SHAK (Safe Haven for All Kids), hospital services, local disaster relief, international humanitarian law and tracing services.

Australian Red Cross needs a little extra help with Red Cross Calling this year. It needs your help in

bringing the focus back to a local community level. The NT Legal fraternity could greatly assist by nominating a volunteer from each firm to collect donations as part of the 2005 'Desk Knock' campaign. Desk Knocking involves a volunteer coordinating the collection of money from work areas by 'knocking' on individuals' desks. 'Desk Knock' will be taking place throughout March.

Volunteers are also needed for door knocking in their local areas on the 12th or 13th of March. Corporate teams that have the support of their employers to collect for the appeal are welcome to wear T-shirts displaying their company logo. If you would like to assist Australian Red Cross in their largest local community fundraising event, please register **now** by calling the Red Cross Calling Coordinator James Scotland on 8924 3961 or via email jscotland@redcross.org.au.



Australian Red Cross

March is
Red Cross Calling