

## LEGAL SERVICES COMMISSIONER V SIEW YIN WOO – BREACH OF SECTION 660 NOTICE

On 7 March 2008 the Administrative Decisions Tribunal found Siew Yin Woo guilty of professional misconduct in relation to a breach of a Section 660 Notice. The Tribunal ordered that Mr Woo be publicly reprimanded and fined \$2,500 and that Mr Woo not be issued with a practising certificate until the fine has been paid. The Tribunal also ordered Mr Woo to pay the Commissioner's costs as agreed or assessed.

Section 660 of the *Legal Profession Act 2004* (LPA 2004) requires a practitioner to respond to a request by the Legal Services Commissioner for information relevant to a complaint.

Failure on the part of a practitioner to provide information or documents or otherwise assist the Legal Services Commissioner, without reasonable excuse, is declared by Section 671 (1) to be professional misconduct.

The Tribunal and the Supreme Court have held that it is important for a practitioner to respond to a request for information or documents and that the response should be prompt.

As Mr Justice Smart stated in the matter of *Veghelyi -v- Council of the Law Society of New South Wales, 12662 of 1989, unrep, NSWSC, 6/9/89*:

It is important that solicitors respond promptly to the Society when it asks for a reply in response to complaints that have been made. It will be an unusual and complex

### 660 Requirements in relation to complaint investigations

- (1) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, an investigator may, by notice served on the lawyer, require the lawyer to do any one or more of the following:
  - (a) to produce, at a specified time and place, any specified document (or a copy of the document),
  - (b) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states),
  - (c) to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, the investigator may, on production of evidence of his or her appointment, require any associate or former associate of a law practice of

which the lawyer is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the lawyer) who has or has had control of documents relating to the affairs of the lawyer to give the investigator either or both of the following:

- (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires,
  - (b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.

Maximum penalty: 50 penalty units.

- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.

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case when a delay of more than 14 days is acceptable and often the reply should be delivered within a shorter period such as 7-10 days. Replies to the Law Society in respect of complaints warrant a high priority.

The requirement of promptness was similarly emphasised by the Administrative Decisions Tribunal in *Legal Services Commissioner v King [2001] NSWADT 14*, at paragraph 30:

The Commissioner has a duty to regulate the conduct of the legal profession and a practitioner, as an officer of the court, has an obligation to co-operate with the regulator. It is most important that the Commissioner is able to investigate and promptly resolve complaints against legal practitioners.

Despite these comments by the Tribunal and courts many practitioners are continuing to ignore requests by the Legal Services Commissioner for a response. In the past six months the Commissioner has written to a number of practitioners warning that they were in breach of the LPA 2004 for not responding to requests for information.

The OLSC has a policy of zero tolerance to practitioners who fail to respond to a Section 660 notice. Our policy of zero tolerance is reinforced in the decisions of the Tribunal and courts as outlined above.

***Don't freeze. Doing nothing will only make things worse.***

A practitioner who responds to a request by the OLSC for information promptly and constructively will avoid a prosecution. In some cases, the OLSC can even assist in restoring the relationship with the client. The OLSC recommends a practitioner undertake the following measures in the event that s/he receives a request for information:

- prioritise the response
- be aware of the time frame for responding
- if you are in doubt about what is needed in the response, contact the relevant OLSC officer
- if you are unable to respond to the letter of request within the time frame stipulated, let our office know and ask for an appropriate extension
- answer all of the questions set out in the letter of request and if you are unable to answer the question(s), provide the best response you can and give reasons as to why you cannot
- make sure you provide all relevant details in relation to the request for information even if they are not requested
- if you are concerned, you may wish to obtain legal advice, but that should not be used as an excuse to delay your response
- don't make promises you cannot keep.

## SYMPOSIUM ON THE FUTURE OF THE GLOBAL LAW FIRM – GEORGETOWN UNIVERSITY.

On 17-18 April 2008 the NSW Legal Services Commissioner attended and presented a paper at a symposium at Georgetown University in Washington, D.C. on The Future of the Global Law Firm. The Symposium brought together scholars from a range of disciplines, legal practitioners, regulators, consultants and experts from professional service firms from the United States, the United Kingdom, Canada and Australia to discuss the future of the global law firm market. The Commissioner was asked to present a paper on the potential significance of changes in law firm ownership and access to capital markets and the emergence of the publicly traded law firm.

The Commissioner's paper was received warmly. There was much interest what we have been doing in Australia in relation to ILPs and public listing. Following the success of our regulatory regime as well as new legislation enacted in the United Kingdom to permit outside ownership the United States has recently begun to support external equity ownership in law firm. It was only a matter of time before the United States saw the potential benefits alternate business structures can bring to law firms and their clients.

# NATIONAL CONTINUING PROFESSIONAL DEVELOPMENT (CPD) GUIDELINES

In the February 2007 edition of Without Prejudice I discussed the development of national CPD Guidelines as another step towards the harmonisation of rules regulating the legal profession. I reported that a draft set of Guidelines had been drawn up by the National CPD Taskforce and were to be tabled at the 2007 Conference of Regulatory Officers (CORO). The Guidelines were tabled at CORO and subsequently endorsed.

Since then CORO regulators in all States and Territories have had several discussions about adopting the Guidelines and their implementation. The Councils of the Law Societies of NSW and Queensland as well as the Legal Practice Board in Victoria have all recently met to consider the Guidelines and each has agreed to adopt them by 1 April 2009.

The Guidelines recommend that the following elements form the core part of CPD schemes operating in Australia.

- (a) CPD schemes should be mandatory.
- (b) The CPD year for reporting purposes is annual from 1 April to 31 March.
- (c) Units acquired during the months 1 January to 31 March may be counted in the current or following CPD year, but not both.
- (d) Legal practitioners must acquire a minimum of 10 units per CPD year.
- (e) A minimum of one unit must be drawn from each of the following three core areas –
  - (i) practical legal ethics
  - (ii) practice management and business skills
  - (iii) professional skills.
- (f) Practitioners may determine which core area a CPD activity fits according to the context and content of the activity.
- (g) CPD activities must be:
  - (i) of significant intellectual or practical content and must deal primarily with matters related to the practice of law
  - (ii) conducted by persons who are qualified by practical or academic experience in the subject covered
  - (iii) relevant to a practitioner's immediate or long term professional development needs.
- (h) A CPD activity may consist of:
  - (i) seminar, workshop, lecture, conference, educational program, discussion group, multi-media or web-based program, recorded material (e.g audio/video/dvd)
  - (ii) preparation for and/or presentation of a CPD activity
  - (iii) publishing, structural editing or refereeing of a legal article in a legal or non-legal publication
  - (iv) membership and participation of a committee where the work involved is of substantial significance to the practice of law, and assists the practitioner's professional development.
- (i) Private study is not accepted as a CPD activity except where it is defined as listening to or viewing recorded material.
- (j) Accreditation of courses or providers must not be a requirement of the scheme.
- (k) Exemptions in whole or in part may apply on application to the authority if:
  - (i) the practitioner has been admitted to practice for a period exceeding 40 years and
    - holds a certificate other than a principal practising certificate; or
    - is a Notary Public who acts solely as a Notary.
  - (ii) the practitioner has experienced hardship arising from geographical location, physical disability or any particular exigencies of practice.
  - (iii) the practitioner has been or will be absent from practice due to parenting leave, illness or unemployment.
  - (iv) other special circumstances warrant an exemption.
- (l) Practitioners should maintain their own CPD records.
- (m) Authorities should conduct an annual audit to monitor compliance with the scheme rules.
- (n) Failure to comply should result in the authority taking any of the steps provided for in the Legal Profession Act 2004.

We will keep you informed as further developments arise.

## 2008 OLSC CUSTOMER SATISFACTION SURVEY – THE INQUIRY LINE

Every three months beginning April 2008, the OLSC will be conducting a satisfaction survey to obtain feedback on our Inquiry Line, to enable us to further fine-tune our services to meet customer expectations and needs. Everyone who contacts the OLSC Inquiry Line is invited to participate.

The survey will ask respondents a range of questions about their experience in contacting the Inquiry Line. Such questions will include for example:

- Whether OLSC staff who handled the call appeared to understand the issues involved in the call
- Whether OLSC staff who handed the call treated the caller in a courteous and professional manner
- Whether the caller was given enough relevant information to deal with the issue(s) and whether the information was helpful
- Whether the call was answered promptly
- Whether the caller was satisfied with the level of assistance required.

The survey will also ask participants whether there are any improvements they would like to see made to the Inquiry Line and the nature of those improvements.

This is the first of many customer satisfaction surveys the OLSC will be conducting over the next twelve months. Following the Inquiry Line Survey our next survey will focus on the legal professions experience of our office, particularly those practitioners who have been or are the subject of a complaint. If you would like to participate in our survey, please contact the OLSC on 02 9377 1800.



### WITHOUT PREJUDICE VIA EMAIL

As indicated in our last issue the OLSC can send out future issues of *Without Prejudice* via email. If you would like to receive *Without Prejudice* via email please contact us at [OLSC@agd.nsw.gov.au](mailto:OLSC@agd.nsw.gov.au)

Comments? Suggestions? Something you'd like to know more about? Write to us at [OLSC@agd.nsw.gov.au](mailto:OLSC@agd.nsw.gov.au)



**WITHOUT PREJUDICE** is published by The Office of the Legal Services Commissioner

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Printed on Monza Satin – 55% recycled and 45% FSC paper stock, using vegetable oil based inks and an environmentally friendly alcohol-free printing process.