



Legal Ombudsman

Annual Report For the Year Ended 31 December 2005

Presented to the Attorney-General pursuant to Section 86
of the *Legal Profession Act 1993*

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Introduction

In accordance with Section 86 of the *Legal Profession Act 1993*, this report covers the functions I have performed during the reporting period 1 January to 31 December 2005. Additionally, it provides information on the complaints received and handled by the Law Society of Tasmania (the Society) during the year and examines some of the issues raised. This report also contains recommendations for change to the legislation in relation to the regulation of the legal profession in Tasmania.

Summary of Functions Performed

The functions of the Legal Ombudsman are to monitor the handling of written complaints and applications about legal practitioners made to the Society, investigate and examine complaints about the manner in which an investigation or hearing has been dealt with by the Society and investigate any other matter relating to disciplinary proceedings as the Attorney-General may direct.

During 2005, I considered 114 letters of complaint about legal practitioners lodged with the Society. I attended most of the fortnightly meetings of the Society's Investigations Committee, some meetings of the Council of the Law Society and hearings of the Disciplinary Tribunal.

I also received 165 calls or visits from members of the public and considered 15 formal requests that I investigate the manner in which complaints were being, or had been, investigated by the Law Society.

Resources

The Office of Legal Ombudsman is a part time position funded from the Solicitors' Guarantee Fund at an annual salary of \$14,621.00.

The Department of Justice provided additional funds to cover such things as accommodation and superannuation.

During the year I was again accommodated in the Office of Consumer Affairs and, as in previous years, was given support by the staff of that Office, for which I am very grateful.

I would again like to record my appreciation of the assistance given to me by the staff of the Law Society, in particular that of the Executive Director, Mr M Hagan and the Office Manager, Mrs V Cowles.

Nature and Volume of Complaints

At the start of 2005, the Law Society had 115 complaints carried over from years 1997 to 2004. They were handled during the year as follows:

1 from 1997	Awaiting action in the Courts and carried forward into 2006.
4 from 1998	One was withdrawn due to the lapse in time, two are still awaiting action in the Courts and one is still awaiting finalization by the Society. Thus three have been carried forward into 2006.
31 from 1999	One was finalized following a hearing by the Disciplinary Tribunal and 30, relating to mortgage matters, have been carried forward into 2006.
1 from 2000	This matter is still awaiting prosecution before the Disciplinary Tribunal and has been carried forward into 2006.
8 from 2001	One was prosecuted before the Council, one was closed and six, relating to the handling of mortgages, have been carried forward into 2006.
10 from 2002	One was dismissed, six are awaiting finalization of investigation action and three are awaiting prosecution. Thus nine have been carried forward into 2006.
9 from 2003	One was successfully prosecuted before the Tribunal, one is awaiting a decision of the Tribunal, five were dismissed/closed and two are still under investigation. Thus three have been carried forward into 2006.
51 from 2004	29 were dismissed/closed, four were withdrawn/not proceeded with, one related to negligence and one was resolved after mediation. Thus 16 were carried forward into 2006.
70	Total number of complaints carried forward into 2006 from years 1997 to 2004

During 2005, the Society received 114 letters of complaint which were handled as follows:

- 53 not sustained or dismissed as lacking in substance, frivolous or vexatious.
- 7 closed because there was insufficient evidence on which to base a successful prosecution.
- 7 sustained/found to have merit.
- 1 resolved.
- 2 considered to relate to negligence about which the complainant could take civil action.
- 44 still under investigation.

Total 114

The nature and outcome of the complaints received are detailed in the following table. As many letters of complaint covered more than one issue, the number of complaints in the table are considerably higher than the number of letters received.

Nature and Outcome of Complaints Received in 2005

NATURE OF COMPLAINT	SUSTAINED/ Found To Have Merit	NOT SUSTAINED	CLOSED	RESOLVED/ Withdrawn/ not proceeded with	NOT COMPLETED	REFERRED (iii)	TOTALS	% (iv)
Breach of Rules of Practice/Court orders/other Acts					4		4	2
Breach of fiduciary duty					1		1	0.5
Wrong/poor advice		5			1		6	3
Poor representation		1			2		3	1.5
Non release of documents/files/money	1	4					5	2.5
Management of money					1		1	0.5
Overcharging/wrongful charging		13	1		6		20	11
Acting without instructions/failing to follow instructions		6	2		2		10	5.5
Failing to respond/communicate with client	2	14	1	1	11		20	16
Breach of confidentiality		2			2		4	2
Misleading client, Court or Society	1	4			1		6	3
Conflict of interest		3	1		4		8	4.5
Unethical behaviour (i)	1	2			5		8	4.5
Lying		4					4	2
Failure to account		4			1		5	5.5
Theft/fraud				1	1		2	1
Breach of undertaking		2			1		3	1.5
Inefficiency/incompetence		1			2		3	1.5
Delay/inaction	2	8	3		11		24	13
Harassment/rudeness/bad conduct toward client/intimidation	2	7	1		4		14	7.5
Other (ii)		11	2		4		17	9
Poor service/work		2	1		1		4	2
Negligence/taxing						2	2	1
TOTALS	9	93	12	2	65	2	183	
% TOTAL (iv)	5	51	7	1	35	1		

Notes:

- (i) Examples of unethical behaviour are soliciting for clients, persuading client to continue useless action.
- (ii) Examples of complaints under 'Other' are "dropping client", wrongly exercising a lien, doing unnecessary work, sending someone else to Court to represent client, failing to apply for Legal Aid.
- (iii) Complainants advised to get bill taxed or seek other remedies.
- (iv) Percentages have been rounded.

As ever, delay/inaction, overcharging and failing to respond/ communicate were the most frequently complained of, at similar levels to last year.

Five percent of completed complaints were sustained compared with none in the previous year. Not sustained was at 51%, down a little on the previous year, and the percentage not completed was down from 40 to 35%.

As mentioned in my last two reports, under the *Legal Profession Act* 1993, a complaint is defined as a complaint relating to professional misconduct or unprofessional conduct of a practitioner. The Council of the Society must dismiss a complaint that it considers is frivolous, vexatious or lacking in substance. In other words, if the complaint does not reveal sufficient poor conduct to be likely to result in a successful prosecution for unprofessional conduct or professional misconduct, it is dismissed as being frivolous, vexatious or lacking in substance.

However, the Society has adopted the practice of sometimes closing a matter rather than dismissing it when there is some substance to the complaint but the Society is unable to prosecute the practitioner. This may occur when the conduct complained of, whilst clearly having substance, does not come within the present definition of unprofessional conduct. It may also occur when there is a situation of the complainant saying one thing and the practitioner another without enough evidence to make a clear decision on whose version of events is correct. Closing a file rather than dismissing a complaint allows the matter to be reactivated if further information becomes available and may also be an indication that the Society does not approve of the conduct complained of.

Sometimes, too, the Society, through a letter or call from the President, may express to the practitioner that his/her conduct is not approved of. I have detailed those complaints handled in this manner during 2005 later in this report.

In addition to the above, there were, during the year, some cases that the Society did not prosecute because it considered that, in light of previous decisions of the Court or the Disciplinary Tribunal, prosecution would be a waste of time and money.

Last year I expressed the view that a higher benchmark for conduct will never be obtained until the issues in question are argued again and I still hold that opinion.

Timeliness:

Of those complaints received and completed in 2005, the fastest investigations took one day and the slowest 300 days, with the average being 70 days, again a slight improvement on the previous year.

Complaints received in 2004, carried over and completed in 2005 totaled 35. The average time to complete them was nine months.

Complaints received in 2003, carried over and completed in 2005 totaled six and took an average of two years.

Formal Prosecution and Disciplinary Action

If, during investigation of a complaint, the Investigations Committee considers that matters raised comprise either unprofessional conduct or professional misconduct, it must apply to the Council of the Law Society, the Disciplinary Tribunal or the Supreme Court to hear the matter.

During the year the Society prosecuted three practitioners before the Disciplinary Tribunal and two before the Council of the Law Society. Briefly, the cases and outcomes were as follows:

- Practitioner A was instructed to act for Mr S in relation to compensation for a back injury received in 1979. There were three issues put to the Tribunal in this case:
 - (a) That there was unreasonable delay in that the practitioner, after accepting instructions from the client in 1990 arising from the injury suffered in 1979, failed with reasonable speed and care, to investigate and pursue the client's cause of action. In relation to this aspect, the Tribunal found the delay of some three years occasioned by the practitioner to constitute unprofessional conduct of a serious nature. He was fined \$4,000.
 - (b) That the practitioner failed to refer to instructions and medical and other records provided by the client previously. Instead, he asked the client to provide the information again. In relation to this issue, the Tribunal found that the letters to Mr S seeking additional information were unnecessary and constituted unprofessional conduct, for which he was reprimanded.

- (c) That the Practitioner failed to respond to two written requests from the Legal Aid Commission to provide it with a report in order that it could review the termination of legal aid previously granted to Mr S. The Tribunal was satisfied that the grant or refusal to grant legal aid did not affect the manner in which the client's file was conducted by Practitioner A. However, as no one had made Mr S aware of this he was left with the impression that the refusal of legal aid would put his case in jeopardy which caused him considerable unnecessary anxiety. The Tribunal found that the failure to respond to the Legal Aid Commission's requests for information was not only impolite, but caused distress to his client. The Tribunal reprimanded Practitioner A on this matter also.

The practitioner was also ordered to pay the costs associated with the investigation of the complaints and the prosecution, some \$13,202.

- Practitioner B was prosecuted before the Disciplinary Tribunal for a breach of Rule 12 of the Rules of Practice. In essence, Rule 12 says that a practitioner may act for more than one party in any proceedings provided the practitioner is satisfied that each of the parties is aware of the situation including that:
 - (a) the practitioner may be prevented from disclosing to any one of the parties the full knowledge that the practitioner has of relevant matters;
 - (b) the practitioner is prevented from giving advice to any one of these parties if that advice is contrary to the interests of any other party;
 - (c) the practitioner must cease to act for all parties if the practitioner determines that he or she is not able to continue to act for all parties without acting in a manner contrary to the interests of one or more parties.

The Society alleged that, in relation to a loan transaction of \$15,000, Practitioner B acted for more than one party without fulfilling her obligations under Rule 12, as above.

One of the Society's submissions to support its case was that there was no written record of the practitioner's compliance with the Rule.

The Tribunal dismissed the application on the grounds that there is nothing in the Rules to say that the advice to the parties has to be in writing and that, on the evidence before it, the Tribunal was not satisfied the Society had proved its case.

The Tribunal ordered the Society to pay the costs of the hearing and the costs of Practitioner B in defending herself, some \$2,500.

- In 2001, Practitioner C was retained to act in relation to Mrs B's rights under the *Testator's Family Maintenance Act 1912* (TFM). Mrs B was illiterate and in receipt of a disability pension. For these reasons, the practitioner offered to act for her on a no win, no fee basis and his offer was accepted. The practitioner later required Mrs B to sign a periodic payment form to pay for the services of counsel.

Some months later, in 2002, Mrs B died. Consequently, the TFM claim was discontinued with no order as to costs. However, in March 2003, the practitioner rendered an account for \$9,785 to the estate of Mrs B for his fees for the TFM claim, the executer's action and the administrator's application.

Following the sale of Mrs B's house, the practitioner deducted from the proceeds, fees of counsel and the amount of \$9,785 as above.

The Society prosecuted Practitioner C before the Disciplinary Tribunal on the grounds that:

- (a) he had no entitlement under the retainer to require Mrs B to sign a periodic payment form;
- (b) he had rendered an account to the estate of Mrs B when he had no entitlement to do so; and
- (c) he had no entitlement to deduct costs from the proceeds of the sale of Mrs B's house.

In the course of the hearing the question arose as to whether the practitioner had misled the Society during the investigation of the complaints.

The matter was heard in October but, some five months later, the Tribunal has yet to hand down its decision.

- In 2002, a complaint was lodged against Practitioner D for continuing to act for two members of the same family in connection with an inquest after she had been informed of matters which gave rise to a conflict of interest in so continuing. She was prosecuted before the Council of the Law Society and found guilty of unprofessional conduct. However, because she had been admitted to practice for only about four years, had sought advice from her employers in relation to the matters that were the subject of the complaint and received advice that she could continue to act, advice she thought she could rely on, the Council found her conduct to be at the bottom of the range of conduct which could be described as unprofessional.

She was required to pay the Society's costs for the investigation and hearing of the matter, some \$5,245.

- Practitioner E was engaged to act in relation to a potential claim for criminal compensation. At the first interview, the practitioner was provided with written authority to obtain a medical report from his client's doctor. For the next seven months the client was informed that the practitioner was still awaiting the report when, in fact, the report had been received. The practitioner then said he would lodge the claim for compensation. The client's representative rang regularly to check on the progress of the matter. One year after first instructing Practitioner E, the claimant found the practitioner had left the firm and had never lodged the claim.

The Council of the Law Society found the practitioner guilty of unprofessional conduct and ordered that he pay the costs of the investigation of the complaint and the costs of the hearing, some \$2,082.

- In 2004, the Society prosecuted Practitioner F before the Disciplinary Tribunal for serious neglect and undue delay in relation to an application to the Administrative Appeals Tribunal (AAT) in relation to a determination of the Veterans' Review Board. Legal Aid had been granted for the practitioner to investigate and advise it on the prospects of successfully appealing to the AAT. The practitioner did not investigate and advise the Legal Aid Commission, he failed to cause an appeal to the AAT to be lodged within time, or at all, and, for some eight months, lost or mislaid his client's file.

By a majority decision, the Tribunal determined that the practitioner's conduct constituted serious neglect and undue delay, that he had breached a Rule of practice and that he was guilty of professional misconduct. The Practitioner was fined \$3,000 and ordered to pay the Society's costs, including any costs incurred by the Council in investigating the complaint.

During 2005, the Practitioner appealed this decision in the Supreme Court on the grounds that the Tribunal had erroneously found his conduct to be professional misconduct when it should have found that it was the less serious offence of unprofessional conduct.

The statutory definition of professional misconduct includes any contravention or failure to comply with the *Legal Profession Act 1993* or any regulations, rules or by-laws made under the Act, however minor they may be.

The practitioner's counsel conceded that there had been serious neglect and delay. However, he submitted that the neglect and delay fell within the definition of unprofessional conduct and did not amount to professional misconduct.

The Chief Justice said that "It is a question of degree, but overall I have reached the conclusion that the conduct was not stamped with the requisite degree of turpitude or shamefulness that was necessary before it could be correctly characterized as professional misconduct." Rather he found the practitioner guilty of unprofessional conduct and reduced the fine from \$3,000 to \$2,000.

The above case and another in 2001, that of the *Law Society v Turner*, highlight problems with the present statutory definitions of professional misconduct and unprofessional conduct.

"Professional misconduct" includes conduct on the part of a practitioner which results in:

- (a) a contravention or failure to comply with -
 - (i) any provision of this Act or any regulations, rules or by-laws made under this Act; or
 - (ii) any terms and conditions imposed under this Part; or
- (b) fiduciary default; or
- (c) any serious neglect or undue delay; or
- (d) the charging of excessive fees or costs; or
- (e) consistent or substantial failure to reach reasonable standards of competence and diligence;

“Unprofessional conduct” includes:

- (a) professional conduct that falls short of a standard of conduct that a member of the public is entitled to expect of a practitioner of good repute and competency; and
- (b) conduct of a kind referred to in paragraphs (c), (d) and (e) of the definition of 'professional misconduct' but of a lesser degree of seriousness.”

The difficulty lies in the fact that it is mandatory to make a finding of professional misconduct for any contravention or failure to comply with the Act or any regulations, rules or by-laws made under the Act, however minor they may be.

In relation to the 2001 case, Justice Crawford said that “In a general sense, professional misconduct should be regarded in this State as a more grave form of misconduct than unprofessional conduct. There may well be an overlap and the same conduct might in some cases amount to both of those things.” He concluded that the common law definitions of professional misconduct and unprofessional conduct apply in addition to the statutory definitions.

He said that there had to be a qualitative test as well as a quantitative one and that conduct should only be defined as professional misconduct if “it is so bad that practitioners of good repute and competency would reasonably consider that it had reached the stage where it could be described as disgraceful or dishonourable.” The Chief Justice held the same view in the appeal heard in 2005, described above.

I note that both the Council of the Law Society and the Tribunal are turning to these two cases for guidance when trying to determine how conduct should be categorized. I think it is important that the statutory definitions of unprofessional conduct and professional misconduct be amended to include the requirement for some qualitative description of conduct such as ‘disgraceful’ and ‘dishonourable’ and I recommend that the legislation be amended accordingly.

Such qualitative descriptions are able to reflect changing community standards and attitudes. I note here that in some of the cases I have observed, my view of what is disgraceful and dishonourable differs somewhat with those of the legal profession.

In my Annual Report for 2002 I recommended that, in cases where a breach of the Rules of Practice may have been relatively minor and of a single instance or where it is plain that the breach was inadvertent, there be scope for admonishment or prosecution for the lesser charge of unprofessional conduct, rather than an automatic prosecution for professional misconduct. I again make this recommendation.

Timeliness:

Of the prosecutions before the Council conducted during the reporting period, one took less than a year and one took two years from the lodgement of the complaint to the finalization of the prosecution. This, in my view, is a reasonably satisfactory process. These prosecutions were for unprofessional conduct before the Council of the Law Society rather than for more serious offences prosecuted before the Disciplinary Tribunal.

Of the prosecutions during the year before the Disciplinary Tribunal, two took four years to reach a hearing and one took six years.

Of even more concern is the fact that, at the end of the reporting period, prosecution action is still awaited in relation to one complaint lodged as far back as 2000 and three from 2002.

The main purpose for prosecuting a practitioner is to protect the public. When there are delays in prosecution, the public is at risk, for longer than necessary, from practitioners who perhaps should not be engaging in work for which they are not properly qualified or should not be practicing at all or whose conduct falls short of an acceptable standard.

There has been some discussion as to where the blame lies for the inordinate delays. As I have mentioned in previous reports, the process between lodgement of a complaint to a determination by the Disciplinary Tribunal has a number of distinct stages. I have listed the stages below with an estimated best likely time taken against each stage, based on my observations over a number of years.

Stage	Estimated average time in weeks
Complaint received and considered at the next fortnightly meeting of the Investigations Committee	6
Complaint put to practitioner for response	4
Response received and considered at next fortnightly meeting of the Investigations Committee	2
Matter referred to counsel for advice	8 - 10
More information sought from complainant and/or practitioner	8
Counsel's advice considered at meeting of Investigations Committee	4
Decision made to prosecute and letter sent to practitioner asking why he or she should not be prosecuted	5
Counsel's advice and response from practitioner considered at next meeting of the Council of the Society which meets every 6 weeks	6
Matter referred to counsel for preparation of case for prosecution, including seeking witness statements	8-12
Application for hearing lodged with secretary to the Tribunal	2
Secretary arranges time and place for hearing. This involves finding a date when three members of the Tribunal, counsel for the Law Society, counsel for the practitioner, the practitioner and any witnesses are available and ready	16
Preparation, by the Tribunal, of its reasons for decision	8
Estimated total time	77 weeks minimum

Over the last few years the Law Society has operated a system that requires members of the Investigations Committee to be case managers for complaints. It has recently asked that they also prepare drafts of any correspondence to be sent, following approval by the Committee as a whole. This is likely to decrease turnaround time a little. However, whilst ever the handling of complaints relies on people who volunteer their time but have other heavy workloads and who can meet only fortnightly, the process will be slow.

Over the last few years changes to the regulation of the legal profession in Tasmania have been proposed. Under the proposed new system, the handling and investigation of complaints would rest with a Board and with staff acting under the direction of the Board. This should reduce the time taken to process complaints to some degree. It will not obviate the need to seek advice from counsel nor to require counsel to prepare cases for prosecution.

In relation to the delays when an application is lodged with the Disciplinary Tribunal, I have already recommended that the number of members of the Tribunal be increased from seven to nine.

In the meantime, I have suggested that two weeks a year be put aside for disciplinary hearings and this suggestion is being considered.

Occasionally a practitioner against whom a complaint has been lodged delays the investigation process by failing to provide information to the Investigations Committee when asked to do so. In 1998, I recommended that the Law Society be given the power to impose automatic fines in such cases and the Act was amended accordingly. However, I failed to provide for the case of a practitioner refusing to pay the fine. A case in the reporting period highlighted this omission. I recommend that the Act, or any new legislation, include a provision for the prosecution of a practitioner who fails to pay the fines.

Informal Disciplinary Action

In addition to taking formal action to discipline practitioners, the Law Society is able to take less formal action against practitioners for conduct that is unacceptable but not so bad as to warrant a formal prosecution. I wholeheartedly agree with this practice whilst ever the *Legal Profession Act 1993* is framed as it is.

During the reporting period, the following informal actions were taken:

- Practitioner G appeared to be soliciting for work in an inappropriate manner. Whilst this was not proved, the President of the Society thought it appropriate to send a cautionary letter.
- Practitioner H acted for someone in a conveyancing matter but, when all was done and paid for, failed to provide his client with the title to the property or information on its registration. Following contact by the Law Society the matter was expedited and the client was satisfied.
- Practitioner I was accused of laughing at, and belittling people opposing his client, as they were waiting to go into Court. The President wrote to him about this behaviour.
- Practitioner J used inappropriate, rude and offensive language to describe her client. Following a letter from the President she sent a letter of apology.

- Practitioner K promised to provide advice about payment for a headstone for the grave of the son of Mrs X. The son had been killed as a result of an accident. When the practitioner found the mother was not his client, he did not respond to her. Whilst this was not considered to be unprofessional conduct, the President wrote to the practitioner expressing her disappointment at his insensitivity.

Alternate Dispute Resolution

When it is deemed more appropriate to mediate a matter than to prosecute, the Society may try to resolve disputes through this means. During 2005, the Society undertook two mediations.

- Practitioner L inappropriately sought information from an employee of an organization that was being sued by another of its employees. Following mediation by the President of the Society the practitioner admitted his fault and apologized and the employer/complainant accepted the apology.
- Practitioner M, who had retired from practice before the complaint was lodged, was found to have had a romantic relationship with a client, the complainant. The Society engaged a mediator in an attempt to resolve various issues. The mediation was not successful. However, as the practitioner was no longer in practice and had undertaken never to practice again, the matter was closed.

Applications to my Office

The majority of people who contact me do so by telephone. During the reporting period I received over 163 calls or visits from members of the public compared to 100 during the previous year.

Most oral representations concern one of the following issues:

- The time taken for a complaint to be investigated by the Law Society.
- The procedure for lodging a complaint.
- Doubts that an investigation by the Law Society will be fair and the belief that lawyers look after their own.
- The payment of a lawyer's bill before the completion of an investigation of a complaint about costs.

- Fear of reprisal by the lawyer if the client should express any dissatisfaction with the service provided.
- Fear of being ‘dropped’ by the legal practitioner if the client lodged a complaint.
- Complete ignorance of legal processes.

Of particular concern to me is the last raised issue. Generally speaking, if people hire a plumber they have a fair understanding of what they have asked the plumber to do. However, this is often not the case when they engage a lawyer. Often they are unable to tell me precisely what they have instructed their lawyer to do and they have failed to ask how long a matter is likely to take.

It is to the legal profession that one turns for assistance with the most important aspects of one’s life - access to children, the purchase of homes, claims for compensation, making of wills and the settlement of estates. Often there is only one chance to get these sorts of things right and poor communication and misunderstandings can be very costly indeed. Whilst section 143 of the Act goes a long way towards overcoming many communication issues between legal practitioners and clients, there is a need to do more.

I believe members of the public need to take a more active role in ensuring they get good service and they need to be educated to do this. For this reason, I recommend that the proposed new regulatory body have, as one of its responsibilities, the conduct of some community education programs on client/lawyer relationships. Both the legal profession and the public would benefit from such programs and there should also be a reduction of complaints to the regulatory authority.

Formal Applications:

During the reporting period, I received 15 formal applications to investigate the manner in which complaints about legal practitioners had been or were being handled by the Society, the same number as the year before.

Of the 15 applications received:-

- Nine were from people who had lodged complaints with the Society and were dissatisfied with the outcome. From my enquiries, I was satisfied the Society had properly investigated their complaints. In a couple of cases, whilst there was substance to the complaints, there was not enough evidence on which to base a prosecution. In one case, I asked that a more detailed response be sent to the complainant and this was done. I note that the Society’s responses to complainants are now generally more informative than in previous years.

- Five applications related to the length of time it was taking the Society to complete its investigations. It is my view that there has been inordinate delay in the handling of at least three of these and I have, on a number of occasions, urged the Society to get on with them.
- The remaining application came from a complainant who considered he had been overcharged by a practitioner. The Society considered there was no evidence of unprofessional conduct. Whilst agreeing there was no evidence of unprofessional conduct, I took the view that, as the practitioner had proceeded to act before receiving a signed retainer agreement, which protects both the practitioner and the client, he might consider reducing the bill. I am pleased to note that he agreed to do so.

Freedom of Information:

During the year I received one request for information under the *Freedom of Information Act 1991* and felt no reluctance in providing the information sought.

Summary of Recommendations

- That the investigation of complaints against legal practitioners be removed from the Law Society and undertaken by an independent body.
- That the statutory definitions of unprofessional conduct and professional misconduct be amended to include some qualitative description of conduct.
- That, in cases where a breach of the Rules of Practice may have been relatively minor and of a single instance or where it is plain that the breach was inadvertent, there be scope for admonishment or prosecution for the lesser charge of unprofessional conduct, rather than an automatic prosecution for professional misconduct.
- That the Act, or any new legislation, include a provision for the prosecution of a practitioner who fails to pay fines imposed by the regulatory body.
- That any new regulatory body have, as one of its responsibilities, the conduct of some community education programs on client/lawyer relationships.

Conclusion:

At the conclusion of my Annual Report for 2004, I drew attention to the fact that, in nearly all my previous reports, I had recommended the investigation of complaints against legal practitioners be removed from the Law Society and undertaken by an independent body. Whilst acknowledging that the Law Society has made improvements in its complaint handling procedures, the underlying reasons for my recommendation; that the present system is inefficient, inflexible, not transparent and subject to accusations of bias; remain unchanged

In my previous report I also said that the Law Society, itself, recognizes the need for change and is particularly keen to be relieved of the burden of handling complaints. Over the last few years, much thought and effort has been devoted to drafting new legislation to place the regulation of the legal profession in Tasmania into the hands of an independent body. In 2004, a Bill to amend the present Act was introduced into Parliament by the Attorney-General, the Hon. Judy Jackson MHA. The House of Assembly passed the Bill and debate took place in the Legislative Council in relation to some aspects. However, the Bill did not proceed to a final reading.

Since that time, a draft Legal Profession Bill 2006 has been prepared incorporating most of the major changes of the 2004 Bill and most of the recommendations I have made over the years.

This report is written in the knowledge that there will be a new Attorney-General appointed this year who, I hope, will support the Legal Profession Bill 2006 and make its enactment a matter of priority.

Judith Paxton
Legal Ombudsman

March 2006