

## **Why So Many Complaints Against Lawyers?**

At every Council Meeting there is invariably a list of complaints by clients against their lawyers about inadequate professional services ("IPS Complaints"). Unhappily, the majority of these IPS Complaints are found to be worthy of further investigation, resulting (at the least) in inconvenience and annoyance to the lawyers concerned or more serious consequences of compliance with an order of the Investigative Tribunal, such as the payment of compensation, the refund of professional fees or being directed to rectify the error, omission or deficiency complained of. Of course, many of these complaints are eventually mediated, often with successful results, but it cannot be gainsaid that no lawyer wishes to be the subject of an IPS Complaint.

The most frequent types of IPS Complaints are matrimonial matters (particularly dealing with ancillary issues) followed by conveyancing and probate matters. In such matters, the client is often aggrieved by the following conduct of the solicitor:

- (1) delays;
- (2) lack of response;
- (3) no information on the progress of the case;
- (4) disagreement over the fees charged; and
- (5) failure to deliver promised deliverables.

While the failure under (5) above is (understandably) sometimes beyond the control of the lawyer, the first four classes of IPS Complaints are usually capable of avoidance by appropriate professional conduct on the part of the lawyer, particularly if he or she is alive to the strong possibility of complaints on one or more of these grounds. Let me suggest some positive methods of client management which may hopefully avoid the commoner IPS Complaints.

- (a) A face to face meeting between the lawyer and the client at an early stage is essential. Some lawyers apparently allow the initial interview to be conducted by a paralegal, thereby giving rise to future misunderstanding and possibly inaccurate advice or representations being given or made by the paralegal which are not brought to the attention of the lawyer.
- (b) Written terms of engagement should be provided to the client at or immediately following that meeting, which should set out clearly important

matters such as (i) the basis of billing, (ii) who is authorised to give instructions on behalf of the client, (iii) the possibility of the client having to pay the other party's costs, and (iv) the scope of services to be provided. A specimen of such a letter drafted by Yasho Dhoraisingam can be found in the March 2008 issue of the *Singapore Law Gazette*.

- (c) Full attendance notes of each meeting or telephone conversation with the client should be diligently made and retained in the file (preferably on different coloured paper for every reference). Alternatively (and even better), an e-mail can be sent to the client after each meeting or conversation to record what was said.
- (d) The lawyer should be careful of what to promise to the client in terms of deliverables; put another way, the lawyer's duty is to manage the expectations of the client so that the client is not misled into expecting more than what the lawyer can reasonably expect to be achieved.
- (e) The lawyer should always return phone calls or respond to the client's letters and e-mails – there is no excuse for not doing so, because such failure will inevitably lead to resentment on the part of the client, and often to the dreaded IPS Complaint.
- (f) The lawyer should also plan for adequate time and manpower to be allocated to the client's matter. If for some reason the lawyer is unable to do something by a previously fixed deadline, then the lawyer should advise the client of his or her inability to do so **before** the date for performance arrives, so that the client at least knows that the lawyer takes agreed timelines seriously. Even if the client is unhappy about the missing of a deadline, advance notice of the missed deadline (and the reasons therefor) would go some way to reduce the risk of an IPS Complaint.

These are the basic rules of client management which are theoretically easy for lawyers to follow. It is impossible always to be (i) available to speak to the client on demand; (ii) able to achieve all the client's aims on time or at all. But so long as the client is satisfied that the lawyer is doing his or her best to look after the client's interests, the chances of an IPS Complaint would be much reduced. It may well be that the lawyer is in fact working conscientiously on the case, but many lawyers forget that it is not enough that work is done – it must also be seen to be being done.

Customer relations are not just for those in sales and marketing – they are also part of a lawyer's essential toolkit.

Certain types of litigation cases tend to attract more IPS Complaints than others. Accordingly, these are cases that lawyers should take special care in handling, including the following:

- (i) Urgent cases with an early hearing date.
- (ii) Cases which the lawyer is taking over at a late stage after the client has discharged his or her previous lawyer.
- (iii) Cases where the lawyer is unfamiliar with the area of law.
- (iv) Cases where a lawyer takes over a case from his colleagues in the same firm without fully immersing himself or herself in the file.
- (v) Cases where a lawyer is asked to apply for an *ex-parte* interim injunction on an urgent basis. This should immediately raise a red flag because of the onerous duty of disclosure imposed on an *ex-parte* applicant. The lawyer's duty is to make full and frank disclosure of all relevant facts and circumstances even though they might be against the client's contentions if the lawyer is (or should reasonably be) aware of such facts or circumstances. In fact, it might well be appropriate for a lawyer to ask for an indemnity or a release from his or her client before making an *ex-parte* application because the risk must be very high of the client not giving his lawyer full information for the preparation of the injunction papers. The indemnity or release would protect the lawyer from the consequences flowing from an *ex-parte* injunction being subsequently set aside for non disclosure resulting, not only in the injunction being lifted without regard to the merits of the application, but in damages being awarded against the injuncting party.

The other danger area which requires clear information being provided to the client is the issue of costs and expenses, both payable to the lawyer as well as to the other side in case the client's law suit is ultimately unsuccessful. The public is generally unaware of the different types of costs involved in litigation, and lawyers

unfortunately do not usually give sufficiently clear and precise information on how much such costs can amount to. The only solution (at least as to the lawyer's own costs) is to render interim bills at frequent intervals so that the client is aware of (i) how much the case is costing him or her; and (ii) how much more the case will cost if pursued to the end. A client who knows that excessive lawyering will dramatically increase the costs for him will temper his demands on his lawyer. I learnt long ago that one of the great lies of the 20<sup>th</sup> (and even the 21<sup>st</sup>) century is uttered by a client who says: "Never mind the cost – fight this case to the end and take every point". Whatever the client says at the beginning of the case, costs will always matter to him.

Many of the homilies set out above are reflected in Part III of the Professional Conduct Rules; yet the number of IPS Complaints continues to increase. So I urge all lawyers to seriously re-look at their client management philosophy to avoid the risk of an IPS Complaint. One practical suggestion I make is that every law firm should consider signing up for the PrimeLaw Programme whereby the Law Society can assist law firms to better handle clients and ultimately earn PrimeLaw certification, which should not only give them a positive edge in demonstrating that they have met the Law Society's high standards of excellence in client care, but will reflect a proven high standard of client management designed to pre-empt and avoid client disappointment and IPS Complaints. For details please visit the Society's website [www.lawsociety.org.sg](http://www.lawsociety.org.sg) (click on "PrimeLaw").

**Michael Hwang, SC**

*President*

*The Law Society of Singapore*