

Our Ref: RR: 71020572

12 July 2021

***Private & Confidential***

Mr P Horwath  
20 Sanctuary Lane  
BOORAL QLD 4655

***BY EMAIL: peterhorwath03@gmail.com***

Dear Mr Horwath

**COMPLAINT AGAINST PETER PONTI**

I refer to the Commission's previous correspondence and advise that I have now had an opportunity to consider your complaint.

You retained Carswell & Company to represent you in an industrial relations matter against your former employee, Mr Kurt Yelds. Mr Yelds was represented by McDuff & Guilfoyle Lawyers Pty Ltd (formerly known as McDuff & Daniel Lawyers).

Mr Peter Ponti was assigned carriage of your legal matter.

**Complaint**

In essence, your complaint is that you were poorly represented by Mr Ponti and that he acted without your instructions in relation to a claim made against you and Security 101 by Mr Yelds.

You further complain that Mr Ponti did not read the case file or that he responded to the other side's law practice without undertaking any research

Please find below my consideration of your complaint.

**Jurisdiction**

Chapter 4 of the *Legal Profession Act 2007* (Act) enables my office to investigate complaints about legal practitioners, law practice employees or unlawful operators. In particular, I may investigate complaints of professional misconduct or unsatisfactory professional conduct as defined in the Act.

*Unsatisfactory professional conduct* is limited to conduct by a practitioner which occurs in connection with the practice of law. That is, conduct which occurs during the course of work usually undertaken by legal practitioners.

*Professional misconduct* is defined more broadly and may include personal conduct by a practitioner which does not occur in connection with the practice of law, but only if that conduct is so serious that it demonstrates the practitioner is not a fit and proper person to continue as a member of the legal profession.



As you may appreciate, I have an obligation to make my decisions according to the provisions of the Act.

### **Analysis of Complaint**

#### *Quality of service*

You have outlined several instances in your complaint wherein you were dissatisfied with the service provided by Mr Ponti. It appears that you disagreed with the way in which Mr Ponti was conducting your legal matter as he acted contrary to the original letter of advice he received from Mr Joshua Sproule. You believe Mr Ponti changed the direction of the matter without prior consulting you. You also allege that Mr Ponti would not consider your suggestions and gave incorrect advice.

A legal practitioner is not compelled to follow your instructions "to the letter" so to speak. They are entitled and can exercise their own judgments given their particular experience to advance the case as they see fit; even if you disagree with the way in which the case is being presented. In my opinion, a legal practitioner will not have breached their duty to a client and will not have failed to give reasonable consideration to the client's instructions simply by choosing contrary to those instructions to exercise their own judgment.

If the client disagrees with the advices provided by the solicitor, it is the client's right to seek alternative legal advice.

The Commission's role, as noted above, is to investigate conduct that may amount to unsatisfactory professional conduct or professional misconduct as defined in the Act. That role however does not extend to micro-managing a lawyer's interactions with their client or to determine how a case is managed and whether the action engaged in is appropriate in the circumstances.

You have expressed concerns that you felt Mr Ponti also hounded you to accept the offer and settle. I appreciate that the process of negotiation is inherently stressful and that some degree of pressure on participants to settle is unfortunately a product of this process and the legal system. A legal practitioner advises on whether or not to settle based on the strengths of your case, the risks you face if the case goes to hearing. There are obviously certain benefits and detriments to that position.

You entered into a Deed of Settlement with Mr Yelds on 27 May 2020.

From the information provided, there is no evidence to suggest that Mr Ponti pressured you to accept the offer and settle. In my view, if you were not happy with the terms of the Deed of Settlement, it would have been in your best interests to have raised your concerns at the time. The fact that you did not achieve the outcome you were seeking does not constitute evidence of a lack competence and diligence on the part of Mr Ponti.

It is only if there is evidence of a substantial or serious omission on the part of the practitioners that consideration can then be given as to whether or not their conduct amounts to a lack of competence and diligence.

Based on the information provided, I am not satisfied that there is sufficient evidence to show that the service was deficient to such a degree or extent that a disciplinary body would consider it amount to unsatisfactory professional conduct.



*Name of opposing firm*

You raise concerns regarding documentation was filed in the court. You state that when you mentioned the firm name of McDuff & Daniel Lawyers to Mr Ponti, he did not know to whom you were referring.

You state you explained to Mr Ponti that it was the name on the documentation which was filed in the Court. You believe that Mr Ponti did not read the case file or he responded to the firm without undertaking any research.

On review of records available to the Commission, McDuff & Daniel Lawyers ceased to operate on 20 May 2018 and McDuff & Guilfoyle Lawyers Pty Ltd commenced on 21 May 2018.

The fact that Mr Ponti may not have recalled the name of McDuff & Daniel Lawyers at the time, is not evidence that he did not read the case file or that he responded to the firm without undertaking any research.

**Tests**

Section 432(1) of the Act provides that a complaint may be dismissed for a number of reasons, including:

*“(b) the complaint does not disclose conduct that the commissioner considers may be—*

- (i) conduct to which this chapter applies; or*
- (ii) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner or misconduct of a law practice employee in relation to the relevant practice”*

**Commissioner’s decision**

For the reasons outlined above, your complaint does not disclose any conduct that I consider may amount to unsatisfactory professional conduct or professional misconduct by Mr Ponti.

Accordingly, pursuant to section 432(1)(b)(ii) of the Act, I have decided to dismiss your complaint.

Yours sincerely



Megan Mahon  
**Legal Services Commissioner**