

RISK MANAGEMENT FOR BARRISTERS

Presented by John Levingston ¹
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*Good luck comes from hard work,
Bad luck comes from poor risk management*

Contents	
Introduction.....	2
Risky conduct	2
What is risk?	4
What is risk management?	5
Three elements	5
Level of risk	5
Why have risk management?	5
How is risk management relevant to a Barrister’s Practice?	6
1 Relevance in litigation	7
2 Risks in practice.....	7
Notifications of offences and acts of bankruptcy	7
Complaint types	9
Source of complaint	11
Result of investigations of complaints	12
How can risks be managed in a Barrister’s practice?	13
Ad hoc.....	13
Structured.....	13
A continuous process	13
Elements in risk management	13
Action for managing risk	14
Bibliography	15
Attachments	15
Risk Register	16
Risk Action Plan - Long format.....	17
Generic sources of risk and their areas of impact	18
Table E1 Qualitative measures of consequences or impact	19
Table E2 Qualitative measures of likelihood	20
Table E3 Qualitative risk analysis matrix - level of risk - draft	21
Table E3 Qualitative risk analysis matrix - level of risk	22
Work sheets.....	22
Risk Action Plan - Short format - Notifications	23
Risk Action Plan - Short format – Types of complaint	24
Risk Action Plan - Short format – Source of complaints	28

¹ Practising Barrister, arbitrator and mediator, Conjoint Professor, School of Law, University of Newcastle and Adjunct Professor, School of Law, University of Canberra.

Introduction

Barristers have historically been aware of their obligations arising from professional ethics, and statutory obligations leading to:

- unprofessional conduct
- professional misconduct

which have been informally recognised as raising issues for professional risk management, ie what not to do to avoid contravening ethical and statutory obligations. More recently risk management includes issues arising in the context of:

- professional indemnity insurance
- statutory limitation of liability

Risky conduct

The profession of a Barrister seems to have become riskier. It is difficult to say at this stage whether that is a result of increased awareness, new labels for old ills, or poor behaviour of some which has attracted disproportionate attention.

The categories of risky and offending conduct has evolved in the statutes. The Legal Profession Act requires a Barrister to show cause if he or she commits an act of bankruptcy,² an indictable offence, a tax offence,³ or fails to notify any of those events.⁴ These are all

² See Legal Profession Act s3(3) which says when a person has committed an "act of bankruptcy".

³ See Legal Profession Amendment (Disciplinary Provisions) Act 2001 s3(1), which added to the Legal Profession Act 1987 the definition of "tax offence", means any offence under the Taxation Administration Act 1953 (Cth).

in addition to the long standing prohibitions against professional misconduct and unsatisfactory professional conduct⁵ and have evolved in recent time from the practices of some junior and senior members of the Bar who sought bankruptcy as a refuge from tax obligations.⁶

A Barrister is now also required to explain specified conduct (whether or not related to practice as a barrister) that the Council considers may indicate that the applicant or holder is not a fit and proper person to hold a practising certificate.⁷

In addition, the Civil Liability Act 2002 requires a Barrister to not provide legal services in proceedings for damages unless holding a reasonable belief, on the basis of provable facts and a reasonably arguable view of the law that there are reasonable prospects of success. The sanctions for breach being disciplinary and personal costs orders.⁸

⁴ See Legal Profession Act ss38FB to 38FE.

⁵ See Legal Profession Act ss 30, 127, substantial and consistent failure to reach reasonable standards of competence and diligence, not of good fame and character, not a fit and proper person to remain on the roll. Legal Profession Regulation 2002, Part 2 (issue of practising certificates): see r7(1)(g) nature of offence in application subject to r3(1) 'excluded offence', r7(1)(h) details of act of bankruptcy and r3(3) defines; Part 13 (continuing notification): notify finding of guilt r133(1) within 7 days r133(3), and to furnish other information r133(5); r134 concerns bankruptcy, r135 to provide a s38FB statement to Council within 14 days of application; r136 concerns s38FB(2) or (4) statement within 7 days where barrister failed to notify matter required by Regulations. Failure to notify (without reasonable cause) bankruptcy, finding of guilt for indictable offence or tax offence under r7(1)(g) and (h), r133, r134 is professional misconduct under r137. See 'Recent amendments to the Legal Profession Act' (Summer 2002/2003) Bar News 57. Note also that failure to comply with s152 is professional misconduct, s152(4).

⁶ Deliberate and recurring conduct of this kind was held to be inconsistent with the traditional requirements of fitness and propriety for practise as a Barrister: NSW Bar Association v Cummins (2001) 52 NSWLR 279; NSW Bar Association v Hamman [1999] NSWCA 404; NSW Bar Association v Somosi [2001] NSWCA 285; NSW Bar Association v Murphy (2002) 55 NSWLR 23; Wardell v NSW Bar Association [2002] NSWSC 548; Cameron v NSW Bar Association [2002] NSWSC 191. See JJ Spigelman AC, Are lawyers lemons?: Competition principles and professional regulation (2003) 77 ALJ 44.

⁷ See Legal Profession Act s37(1)(a). 37 Refusal, suspension or cancellation of practising certificate generally. (1) A Council may refuse to issue, may cancel or may suspend a practising certificate if the applicant or holder: (a) is required by the Council to explain specified conduct (whether or not related to practice as a barrister or solicitor) that the Council considers may indicate that the applicant or holder is not a fit and proper person to hold a practising certificate and fails, within the period specified by the Council, to give an explanation satisfactory to the Council.

⁸ Civil Liability Act 2002 which amended the Legal Profession Act: see Part 11 Division 5C, 198J 198N, and S198L Legal Profession Act 1987 which requires the Solicitor or Barrister to sign a certificate annexed to the pleading. See Bret Walker SC New Part II Division 5C of the Legal Profession Act 1987 Expanded duties of barristers in damages cases (2002) Bar News 34; Nicholas Beaumont What are reasonable

Further, there are professional liability issues arising from professional practice: including duty of care, duty to advise, advice on settlement and consumer protection legislation.⁹

There are many risks associated with establishing and maintaining professional practice as there are competing demands of professional responsibilities against personal and domestic affairs; work pressure from the proliferation of new laws and changes to old laws;¹⁰ pressure to deal with all relevant cases including unreported judgements by contrast to the earlier reliance on authorised reports; Court sittings reducing the time for personal matters (particularly access to business hours) though this is not new; preoccupation with the affairs of clients and insufficient attention to personal matters; increased financial pressure of practice brought by changes in technology. Some of these matters are not new, but there does seem to be more issues to cope with today than say 25 years ago when life at the Bar seemed simpler, and less expensive.¹¹ These are all matters which have increased the pressure on Barristers in their private and professional life, financially and professionally, and which should be added to the bag of issues which increase risk and require risk management.

What is risk?

*Risk is the exposure to the possibility of such things as economic loss or gain...as a consequence of pursuing or not pursuing a particular course of action.*¹²

prospects of success (2002) LSJ 42.

⁹ Civil Liability Act, s50. See Alister Abadee Recent developments in the professional liability of barristers, 23 January 2003 Bar Brief, who also notes some relief may be available as proportionate liability, Civil Liability Act Part 4, ss34(1), 35 and 36.

¹⁰ There are over 10,000 Commonwealth Acts today by comparison to some 4,000 in 1976. This does not include State Acts.

¹¹ I am not aware of any quantitative studies on the costs and profits of a Barrister's practice as have been done by the Financial Management Resource Centre at the University of New England for accountant and solicitors practices, but I would not be surprised to have confirmation of the anecdotal evidence that Barrister's fees have been in a time warp for some years under the pressure from solicitors to not increase fees whilst overheads have increased with relentless regularity.

¹² A basic introduction to managing risk, Standards Australia, p4. See AS/NZS 4360:1999 Risk Management Standard, published by Standards Australia.

What is risk management?

Three elements

Risk management has three elements:

- The perception that something could happen
- The likelihood of something happening, and
- The consequences if it happens.

which identify the level of risk in the context of risk management. These are explored below in Tables E1 to E3.

Level of risk

The level of risk:

*... is the combination of the likelihood of a risk occurring, and the consequences if it does occur.*¹³

Why have risk management?

Risk management for Barristers is about:

- Maximising effectiveness in a competitive and complex profession arising from
 - stringent professional standards, including duties to the Court and the client¹⁴

¹³ Fn 12

¹⁴ Although the Bar's Motto is 'Servants of all yet of none' intended to emphasis the specialized function of Barristers to distinguish them from Solicitors, these two duties remind one of the old Venetian play which has been on stage in NSW in recent years 'The Servant of Two Masters', which although humorous,

- accountability
- focus on results
- Identifying risks
 - personal
 - professional
 - ethical
 - statutory
 - advice work
 - litigation¹⁵
- Developing structured processes, systems and techniques for managing those risks
- Achieving good outcomes, including
 - Effective decision-making
 - Effective delivery of professional services
 - Effective allocation and use of limited resources
 - High professional standards of accountability and delivery of professional services
 - Personal satisfaction and morale

How is risk management relevant to a Barrister's Practice?

Apart from the risks for a Barrister in his or her personal life which have adverse emotional consequences (lack of family time, divorce etc) there are two broad areas where risk management seems to have a place in professional practice:

1 Relevance in litigation

illustrates the potential impossibility, conflicts, confusion and risks which can arise.

¹⁵ Potentially involving varying levels of risk from the relationships with opposing counsel, instructing and opposing solicitors, witnesses for and against, and all coloured perhaps by the state of play as perceived by that person who is invariably under pressure themselves. If in doubt, see Table 5 below which sets out the sources of complaints against Barristers.

2 Risks in practice

1 *Relevance in litigation*

See Lexis Nexis search of 'risk management' which identifies some 261 cases and articles on the topic, show that it is an issue which is coming before the courts more often in a range of cases involving such causes of action as breach of duty, and in some areas, depriving the party causing loss from limiting liability that would otherwise be available to them.¹⁶

2 *Risks in practice*

The immediately identifiable risks to a Barrister's practice of his or her profession can be found in the tables published by the NSW Bar Association¹⁷ reproduced below. Some themes appear from the tables set out below.

The most important conclusion is that all of these incidents can be managed by using principles of risk management so they are eliminated or at worst, managed, and potentially disastrous consequences avoided. Nevertheless, it is not foolproof, but is perhaps better than doing nothing.¹⁸

Notifications of offences and acts of bankruptcy

- table 3 – notifications - poor management of personal affairs (number of notifications/total notifications)
 - financial management involving tax and bankruptcy 13/22
 - alcohol related 6/22

16 See Civil Aviation (Carriers' Liability) Act 1959 (Cth), Warsaw Convention Arts 25 and 25A and Carriage of Goods by Sea Act 1991 (Cth) Hague Visby Rules Art4(5)(e); both concerning losses caused by willful default.

17 NSW Bar Association Annual Report 2004-2005, Questions as to professional conduct pp47-56,

18 There are known knowns; There are things we know we know. We also know there are known unknowns, that is to say we know there are some things we do not know. But there are also unknown unknowns – the one's we don't know we don't know. Donald Rumsfeld, US Department of defense briefing, 12/2/02.

Table 3**Notifications of offences and acts of bankruptcy made by barristers between 1 July 2004 and 30 June 2005 (compared to previous year)**

	2004-2005	2003-2004
Tax offences	8 [^]	8 [*]
Acts of bankruptcy	5	5 [#]
Indictable offences	2	0
Prescribed concentration of alcohol	6 [∞]	8
Traffic offences	0	3
Fare evasion	0	3
Other	1	3
Total	22	30

[^] Of the eight notifications of tax offences, one barrister notified the council of five tax offences, one barrister notified four tax offences, one barrister notified three tax offences and two barristers notified two tax offences. These have been treated as one notification of tax offences in each case. Two barristers made two notifications of tax offences on different dates. These have been treated as separate notifications.

^{*} Of the eight notifications of tax offences, one barrister notified the council of three tax offences and one barrister notified the council of four tax offences. These have been treated as one notification of tax offences in each case.

[#] Of the five notifications of acts of bankruptcy, one notified the council of an act of bankruptcy and one tax offence. This has been treated as one notification of an act of bankruptcy.

[∞] Of the six notifications of prescribed concentration of alcohol offences, one barrister notified the council of two PCA offences, an indictable offence and an other offence. These have been treated as separate notifications.

Complaint types

- table 4 – types of complaint - poor application of professional obligations (number of complaints/total complaints)
 - misleading/dishonest conduct 6/47
 - court related work
 - failure to adduce evidence available 5/47
 - acting without instructions 2/47
 - failure to appear 2/47
 - incompetence in and out of court/in legal practice 4/47
 - breach of Barrister's Rule 35 (Clyne's case) 1/47
 - obstruct/delay proceedings 1/47
 - pressure to change plea/plead guilty/to settle 1/47
 - rudeness/discourtesy 1/47

Table 4

**Number of complaints received by complaint type between 1 July 2004 and 30 June 2005
(compared to previous year)**

Complaint type	2004-2005	2003-2004
Acting contrary to/failure to carry out instructions	0	3
Acting without instructions	2	0
Breach of s152 <i>Legal Profession Act 1987</i>	1	0
Breach costs disclosure provisions Part 11 <i>Legal Profession Act 1987</i>	2	0
Breach of Barristers' Rule 35 (Clyne case)	1	3
Breach of Barristers' Rule (other)	2	3
Breach of confidentiality	2	0
Conflict of interest	1	1
Conspiracy to pervert course of justice	2	1
Delay/failure to provide chamber work	1	2
Failure to adduce evidence available	5	1
Failure to advise properly or at all	1	4
Failure to appear	2	5
Failure to explain terms of settlement (properly or at all)	1	1
Incompetence in court	1	0
Incompetence in & out of court	4	
Incompetence out of court/in legal practice	2	0
Misleading conduct/dishonesty	6	7
Obstruct/delay proceedings	1	0
Other unethical conduct	3	12
Over zealous cross-examination (harranging a witness)	0	3
Overcharging and/or over-servicing	2	3
Personal conduct	2	3
Practising without a practising certificate	1	0
Pressure to change plea/plead guilty/to settle	1	2
Rudeness/discourtesy	1	1
Total	47	55

- Note that failure to comply with the Bar Rules can be professional misconduct or unsatisfactory professional conduct, *Legal Profession Act s57D(4)*.

Source of complaint

- table 5 – source of complaints – poor communication (number of complaints/total complaints)
 - clients/former clients 25/47
 - opposing client 6/47
 - instructing solicitor 2/47
 - opposing solicitor 2/47
 - Barrister 1/47

(which is particularly surprising as one of the skills of a barrister is the art of persuasion)

Table 5

Complaint received between 1 July 2004 and 30 June 2005 by complainant type (compared to previous year)

	2004-2005	2003-2004
Bar Council	4	5
Barrister	1	0
Client / former client	25	24
Instructing solicitor	2	2
Legal services commissioner	2	2
Opposing client	6	16
Opposing solicitor	2	0
Witness	2	3
Police	1	0
Other	2	3
Total	47	55

Result of investigations of complaints

Table 8

Result of investigations of complaints under Part 10 of the *Legal Profession Act 1987* carried forward or commenced and completed between 1 July 2004 and 30 June 2005 (compared to previous year)

	2004-2005	2003-2004
Result of investigation		
Withdrawn	6	3+
Withdrawn but council initiated complaint under s134(2)	0	0
Dismiss – s139(1)(a)	0	1
Dismiss – s155(3)(b)	0	1
Dismiss – s155(4)	29 [∞]	40*
Dismissed with conditions attached to practising certificate – s155(4)	0	0
Dismiss – s155A	1	1
Dismiss – s160(1)(a)	3	0
Refer to tribunal (professional misconduct) – s155(2)	2	5
Refer to tribunal (unsatisfactory professional misconduct) – s155(2)	1	1
Refer to tribunal (unsats prof conduct/prof misconduct) – s155(2)	2	2
Reprimand – s155(3)(a)	4	3
Reprimand – s155(3)(a), plus pay compensation	0	2
Reprimand plus conditions on practising certificate – s155(3)(a)	0	0
No action required as barrister's name removed from roll	0	0
Investigation transferred to LSC	0	1
Total	48	60

+ The withdrawal of one complaint followed successful mediation of the complaint.

* In the period 2003-2004, 11 decisions made by the Bar Council in 2003/2004 to dismiss a complaint pursuant to s155(4) were the subject of an application for review by the legal services commissioner. As at 30 June 2005, all of those decisions were upheld by the LSC under s160(1)(a). In the period 2003-2004, an application for review by the LSC was also made in respect of a decision made by the Bar Council in 2002-2003 to dismiss a complaint pursuant to s155(4) and in September 2004, the LSC decided to reprimand the barrister.

[∞] In the reporting period 2004-2005, 12 decisions made by the Bar Council in 2004/2005 to dismiss a complaint pursuant to s155(4) were the subject of an application for review by the legal services commissioner. As at 30 June 2005, four of those decisions were upheld by the LSC under s160(1)(a). After 30 June 2005, a further one of those decisions was upheld by the LSC. As at 25 August 2005, seven decisions remain under review. In the reporting period 2004-2005, two applications for review by the LSC were also made in respect of decisions made by the Bar Council in 2003-2004 to dismiss a complaint pursuant to s155(4). As at 30 June 2005, both decisions were upheld by the LSC.

How can risks be managed in a Barrister's practice?

Two approaches

- Ad hoc intuitive approach based on experience
- Structured approach

Ad hoc

If it looks like a duck...

(but watch out for the unexpected)¹⁹

Structured

A continuous process

It is desirable to develop a mind set of a conscious approach to managing the risks inherent in every decision. Many decisions have to be made quickly and are often based on intuition, but it is nevertheless important to think about the risks involved.

20

Elements in risk management

The steps in a formal risk management process might include: ²¹

¹⁹ 'Duck, its Dick' headline New York Daily News, Borowitz Report, 14 February 2006 about Dick Cheney shooting his hunting friend Harry Whittington.

²⁰ Fn 12 p7.

²¹ Fn 20. For further reading see: The procedures for the Risk Management Process, fn10, p16; and Risk Treatment, fn10, p34; which are set out as flow charts in Standards Australia, HB 142 – 1999, *A basic introduction to managing risk*.

- Context
- Identification
- Analysis
- Evaluation
- Treatment
- Monitoring and Review
- Effective communication

Action for managing risk ²²

- Rigorous thinking
- Forward thinking
- Pro-active conduct
- Responsible thinking
- Accountability
- Balanced thinking
- Understanding

²² Fn 12.

The attachments which follow set out a structured approach to creating a Risk Register for risks associated with practice as a Barrister, and a Risk Action Plan for managing each of those risks by reference to any resources required, whose responsibility and timing. There are generic sources of risk which can also have an impact on professional practice. Tables E1 – E3 set out qualitative issues for assessing risk consequences, likelihood and levels. Finally, there are three work sheets to work through which are based on complaints reported in the Bar Association Annual Report 2004-2005: Notifications; Types of complaints; and Source of complaints.

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Attachments

Risk Register²³

Function/activity: Practice as a Barrister

Date of risk review:

Created by:

Date:

The risk: What and how	Consequence of event happening	Adequacy of existing controls	Consequence rating (Table E1)	Likelihood rating (Table E2)	Level of risk (Table E3)	Risk Priority

²³ Fn 12 Appendix H, Risk Management Documentation

Risk Action Plan²⁴ - Long format

(complete for each item on the Risk Register)

<p>Item</p> <p>Risk</p>
<p>Summary</p> <p>Recommended response and impact</p>
<p>Action Plan</p> <p>1 Proposed action</p> <p>2 Resource requirement</p> <p>3 Responsibility</p> <p>4 Timing</p> <p>5 Reporting and monitoring required</p>

²⁴ Fn 12, Appendix H, Risk Management Documentation

Generic sources of risk and their areas of impact ²⁵

D2 - Sources of Risk	D3 - Areas of Impact					
Commercial and legal relationships						
Economic circumstances						
Human behaviour						
Natural events						
Political circumstances						
Technology/technical issues						
Individual activities						

Areas of Impact:

- (a) Asset and resource base
- (b) revenue and entitlements
- (c) Costs
- (d) People
- (e) Community
- (f) Performance
- (g) Timing and schedule of activities
- (h) Environment
- (i) Intangibles (reputation, goodwill, quality of life)
- (j) Organisational behaviour

²⁵ AS/NZS 4360:1999 Risk management, Standards Australia, Appendix D, Table D1 example of risk identification template.

Table E1 Qualitative measures of consequences or impact ²⁶

Level	Descriptor	Level of loss
1	Insignificant	Low
2	Minor	Medium
3	Moderate	High
4	Major	Major
5	Catastrophic	Catastrophic/Huge

Note: The measure of consequence is assigned to reflect the needs and activity.

²⁶ AS/NZS 4360:1999 Risk management, Standards Australia, see Appendix E.

Table E2 Qualitative measures of likelihood ²⁷

Level	Descriptor	Level of likelihood
A	Almost certain	Is expected to occur in most circumstances
B	Likely	Will probably occur in most circumstances
C	Possible	Might occur at some time
D	Unlikely	Could occur at some time
E	Rare	May occur only in exceptional circumstances

Note: The measure of likelihood is assigned to reflect the needs and activity.

²⁷ AS/NZS 4360:1999 Risk management, Standards Australia, see Appendix E.

Table E3 Qualitative risk analysis matrix - level of risk²⁸ - draft

Complete the following table using Tables E1 and E2

Likelihood	Consequences				
	Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
A Almost certain					A5 C
B Likely					
C Moderate					
D Unlikely					
E Rare	E1 L				

Description of level and risk management action:

	Level	Risk management action
L	Low	Routine
M	Moderate	Responsible thinking
H	High	Attention needed
E	Extreme	Immediate action required

²⁸ AS/NZS 4360:1999 Risk management, Standards Australia, see Appendix E.

Table E3 Qualitative risk analysis matrix - level of risk²⁹

Likelihood	Consequences				
	Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
A Almost certain	A1 H	A2 E	A3 E	A4 E	A5 E
B Likely	B1 H	B2 H	B3 E	B4 E	B5 E
C Moderate	C1 L	C2 M	C3 H	C4 E	C5 E
D Unlikely	D1 L	D2 L	D3 M	D4 H	D5 E
E Rare	E1 L	E2 L	E3 M	E4 H	E5 H

Description of level and risk management action:

	Level	Risk management action
L	Low	Routine
M	Moderate	Responsible thinking
H	High	Attention needed
E	Extreme	Immediate action required

Work sheets

²⁹ AS/NZS 4360:1999 Risk management, Standards Australia, see Appendix E.

Risk Action Plan³⁰ - *Short format - Notifications*

Use matrix in **Table E3** to insert rating, required action, and use **Risk Action Plan** at p16 items 1 - 4 to add a short description of action to be taken

Risk – Notification matters – Table 3 (2005/2004)	Rating Table E3	Required action Table E3
Tax offences (8/8)		
Acts of bankruptcy (5/5)		
Indictable offences (2/0)		
Prescribed concentration of alcohol (6/8)		
Traffic offences (0/3)		
Fare evasion (0/3)		
Other (1/3)		

Ratings: (Low, Medium, High, Major, Catastrophic)

³⁰ Adapted from Appendix H, Risk Management Documentation.

Risk Action Plan³¹ - ***Short format – Types of complaint***

Use matrix in **Table E3** to insert rating, required action, and use **Risk Action Plan** at p16 items 1 - 4 to add a short description of action to be taken

Risk - Types of complaint - Table 4 (2005/2004)	Rating Table E3	Required action Table E3
Misleading conduct, dishonesty (6/7)		
Failure to adduce evidence available (5/1)		
Incompetence in and out of court (4/0)		
Other unethical conduct (3/12)		
Acting without instructions (2/0)		
Breach costs disclosure provisions Part 11 Legal Profession Act # (2/0)		
Breach of Barrister's Rules (2/3)		
Breach of confidentiality (2/0)		
Conspiracy to pervert the course of justice (2/1)		
Failure to appear (2/5)		
Incompetence out of court/in legal practice (2/0)		
Overcharging or over servicing (2/3)		
Personal conduct (2/3)		
Breach s152 Legal Profession Act ### (1/0)		
Breach of Barrister's Rule 35*		

³¹ Adapted from Appendix H, Risk Management Documentation.

(Clyne's case) (1/3)		
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Conflict of interest (1/1)		
Delay/Failure to provide chamber work (1/2)		
Failure to advise properly or at all (1/4)		
Failure to explain terms of settlement properly or at all (1/1)		
Incompetence in court (1/0)		
Obstruct/delay proceedings (1/0)		
Practising without a practising certificate (1/0)		
Pressure to change plea/plead guilty/to settle (1/2)		
Rudeness/discourtesy (1/1)		

Ratings: (Low, Medium, High, Major, Catastrophic)

Notes:

See Legal Profession Act 2004, Part 3.2 – Costs disclosure and assessment, ss 301 – 400. Previously Part 11 in 1987 Act.

Legal Profession Act 1987

152 Powers of Council or Commissioner when investigating complaint

(1) For the purpose of investigating a complaint, a Council or the Commissioner may, by notice in writing served on any legal practitioner, require the legal practitioner to do any one or more of the following:

- (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,
- (b) to produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
- (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.

(1A) A Council or the Commissioner may inspect any document produced before the Council or Commissioner under this section and may retain it for such period as the Council or Commissioner thinks necessary for the purposes of an investigation in relation to which it was produced. A Council or the Commissioner may make copies of the document or any part of the document.

(2) If a legal practitioner against whom a complaint is made claims a lien over documents relating to the matter the subject of the complaint, the Council or the Commissioner may require the legal practitioner to waive the lien if satisfied it is necessary for the orderly transaction of the client's business.

(3) A requirement under this section is to be notified in writing to the legal practitioner and is to specify a reasonable time for compliance.

(4) A legal practitioner who, without reasonable excuse, fails to comply with such a requirement is guilty of professional misconduct.

(5) A legal practitioner must not mislead or obstruct a Council or the Commissioner in the exercise of any function under this Division. The wilful contravention of this subsection is capable of being professional misconduct.

Note:

Documents has a wide meaning. The term is defined in the Interpretation Act 1987 to mean any record of information. The term would include any file that was itself a record of information.

*Bar Rules

Responsible use of court process and privilege

35. A barrister must, when exercising the forensic judgments called for throughout the case, take care to ensure that decisions by the barrister or on the barrister's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:

- (a) are reasonably justified by the material already available to the barrister;
- (b) are appropriate for the robust advancement of the client's case on its merits;
- (c) are not made principally in order to harass or embarrass the person; and
- (d) are not made principally in order to gain some collateral advantage for the client or the barrister or the instructing solicitor out of court.

[Amended Gazette No. 66 of 20 June 1997 p 4554]

Risk Action Plan³² - Short format – Source of complaints

Use matrix in **Table E3** to insert rating, required action, and use **Risk Action Plan** at p16 items 1 - 4 to add a short description of action to be taken

Risk - Source of complaints - Table 5 (2005/2004)	Rating Table E3	Required action Table E3
Client/former client (25/24)		
Opposing client (6/16)		
Bar Council (4/5)		
Instructing solicitor (2/2)		
Legal Services Commissioner (2/2)		
Opposing solicitor (2/0)		
Witness (2/3)		
Other (2/3)		
Police (1/0)		

Ratings: (Low, Medium, High, Major, Catastrophic)

³² Adapted from Appendix H, Risk Management Documentation.