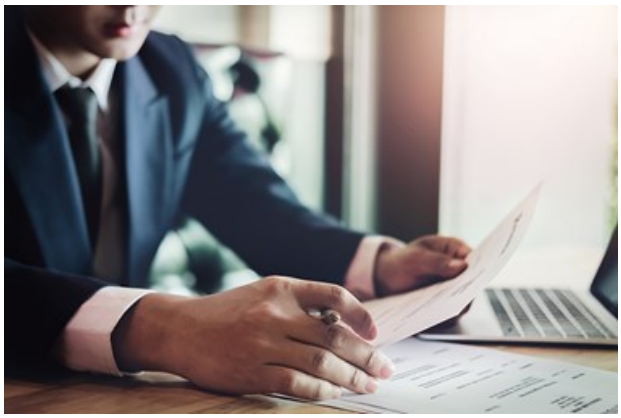
GILSHENAN & LUTON
LEGAL PRACTICE



The purpose and importance of particulars in disciplinary proceedings

Author: Callan Lloyd
Email: clloyd@gnl.com.au
Phone: 0421 406 476
Date: Friday August 15, 2025

The 2023 decision of *Lavercombe v Legal Services Commission* [2023] QCAT 356 is a reminder of the vital role (and the limits) of particulars in disciplinary proceedings. In this case review, we consider the purpose and importance of particulars in disciplinary matters.

At first instance, the Legal Practice Committee (a disciplinary body created under the *Legal Profession Act*) ruled against him, but an appeal to QCAT resulted in a decision in his favour.

Before considering that decision, we turn to consider the function of particulars generally.

What is the function of particulars in disciplinary proceedings?

In essence, particulars are a road map through which the prosecuting body demonstrates to the respondent how it intends to prove its allegations. Particulars set out the specific facts relied upon to support the allegations made.

They serve a number of functions and are relevant to both disciplinary and criminal proceedings.

Particulars allow for a proper understanding of the allegations

Firstly, particulars assist the respondent to understand the case alleged against them. Chief Justice Gleeson in *Goldsmith v Sandilands* said that:

“The function of particulars is not to expand the issues … but to fill in the picture … with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial.”

Consider this scenario

Imagine, for example, a complainant provides a statement to a regulator alleging a fellow employee engaged in five instances of bullying and harassment over a period of time. The regulator then commences a disciplinary application against the alleged bully, involving a single charge of “bullying and harassment”.

Whilst the complainant’s statement might be disclosed to the respondent, in the absence of written particulars, the respondent would not be able to properly respond to the charge, because of its lack of detail.

How could the respondent be expected to know:

- how many alleged incidents of bullying are encompassed by the charge;
- the precise details of the events alleged against them;
- what evidence they need to marshal in their own defence; and
- how to approach their response (including any cross-examination of the complainant)?

Now, imagine the subject of the allegation can demonstrate they were actually interstate for a period of time when three of the five allegations are said to have occurred. What impact would that evidence have on a vague charge with no particulars as to the allegation/s faced in the disciplinary hearing?

Particulars allow for a proper response to the allegations

Particulars also allow a respondent to formulate objections to the admissibility of evidence. The cornerstone of admissibility is relevance.

It follows that requiring those commencing formal allegations to be specific, through the provision of adequate particulars, permits a proper assessment as to the admissibility of evidence. That, in turn, facilitates proper rulings upon the issue.

Particulars make clear the extent of the issues in dispute

Finally, the provision of particulars assists an individual who is subject to a substantiated allegation to have certainty as to the finding against them.

This may be important, for example, if a regulator sought to commence a second charge or disciplinary application against an individual in circumstances where they were previously sanctioned for the same conduct.

This is notwithstanding that the applicability of double jeopardy principles is not as strong in disciplinary proceedings as it is in criminal law; see, for example, the Crime and Corruption Commission's discussion paper on Double Jeopardy and Disciplinary Proceedings.

Case review - Lavercombe v Legal Services Commission (LSC)

The circumstances arose from litigation within a body corporate. Mr Lavercombe acted for one of the lot owners, whereas the body corporate itself was represented by other lawyers.

Ms C was a member and secretary of the body corporate. There was no dispute that in the course of acting for his client, Mr Lavercombe had direct contact with Ms C. He instigated a telephone conversation with her where they went on to discuss issues the subject of the ongoing litigation.

The LSC charged Mr Lavercombe with dealing directly with another solicitor's client, in breach of rule 33 of the *Australian Solicitor Conduct Rules* (**ASCR**).

The allegation was particularised on the basis that Ms C was at all material times "*a client of [the other law practice] in her capacity as secretary of the Body Corporate*". Mr Lavercombe disputed that Ms C was the client of another practitioner.

At first instance, the Legal Practice Committee ruled against Mr Lavercombe. The Committee acknowledged:

"…. *that the particulars [provided by the LSC] in this respect [were] somewhat vague*…."

It went on, however, to conclude that Mr Lavercombe was at no point unaware of the case he was required to answer. The Committee held that Ms C was a representative of the client body corporate, and was therefore a client for the purpose of rule 33 of the ASCR. Accordingly, the Committee substantiated the allegation.

Mr Lavercombe challenged the finding through a review in QCAT. The Tribunal, constituted by His Honour Boddice J, found in Mr Lavercombe's favour.

QCAT's decision in *Lavercombe* underscores the importance of particulars in disciplinary applications commenced under the *Legal Profession Act*.

Particulars cannot extend the charge

His Honour confirmed that particulars serve the purpose of informing the respondent of the case to be met at trial, but that particulars cannot extend the nature of the charge.

The prohibition on 'extending the charge' refers to the restriction against broadening the scope of the allegation, thereby expanding the specific charge faced by the respondent. Where there is some inconsistency between the wording of the charge on one hand, and the particulars or evidence on the other, it is not appropriate that the particulars are relied upon to expand the wording of the charge.

In *Lavercombe*, His Honour noted the observation from Gleeson CJ in *Goldsmith v Sandilands*, regarding the function of particulars (as outlined above). His Honour determined that purpose was served in Mr Lavercombe's matter (i.e. *to put the respondent on guard as to the case to be met).*

Particulars in disciplinary proceedings must be precise

His Honour determined, however, that there was a more fundamental problem with the framing of the discipline application by the Commissioner. Specifically, his Honour noted these features:

1. The particulars expressly asserted that the direct dealing with Ms C occurred whilst she was *"the client of the other practitioner"* , whereas that was not factually correct, and nor was it supported by evidence.
2. The particulars could not allow the term "client" to be interpreted differently to the charge. Whilst the particulars stated that Ms C was a client of the other practitioner *"in her capacity as secretary of the body corporate"*, the client was not the secretary of the body corporate. Rather, the client *was* the body corporate.
3. Noting that the discipline application was in the nature of the charge, his Honour found that the Commissioner is required to prove the charge to the requisite standard, and proof can only occur where there is evidence to establish the necessary elements. In Mr Lavercombe's case, no such proof was established on the charge because the charge was contrary to the evidence.

Accordingly, the effect of his Honour's decision was that the Committee erred in finding the disciplinary charge to be proven against Mr Lavercombe.

The unfortunate footnote on the decision, so far as the practitioner was concerned, is that the Commissioner then sought, and was granted, leave to vary the discipline application in accordance with s455 of the *Legal Profession Act*. The amendment in effect rectified the difficulty caused by the framing of the original charge, despite the practitioner's success against the Commissioner in reviewing the Legal Practice Committee's original decision. See further: *Lavercombe v Legal Services Commissioner [2023] QCAT 356*.

Important points regarding particulars in disciplinary cases

Particulars play an important role in disciplinary proceedings. However, practitioners should bear in mind that particulars cannot function to extend the charge.

In assessing a client's position in disciplinary proceedings, regard should be had to the specific framing of the charge, and also the sufficiency and content of the particulars. Where there is some inconsistency between the wording of the charge on one hand, and the particulars or evidence on the other, it is not appropriate that the particulars are relied upon to expand the wording of the

charge.

Get help from a professional misconduct and disciplinary lawyer

Any individual the subject of a disciplinary allegation should contact an experienced professional disciplinary lawyer. It is usually critical to obtain timely advice for guidance through the process. Decisions made early on in the process can have a substantial impact on the outcome of such proceedings.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.