

**CONCERNING**

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the Wellington Standards Committee 1

**BETWEEN**

**BI**  
of [overseas]  
Applicant

**AND**

**YP AND**  
**YO AND**  
**AAT LTD**  
all of Wellington  
Respondents

**The names and identifying details of the parties in this decision have been changed.**

**DECISION**

[1] In June 2010 the Standards Committee issued a decision declining to uphold complaints that had been made by Ms BI (the Applicant). She had made five complaints against AAT Limited (the law firm) and two practitioners of the law firm, namely Mr YP (Practitioner 1), Ms YO (Practitioner 2). None was upheld by the Standards Committee.

[2] Having given consideration to the way the complaint was made and the joint response to the complaints by Practitioner 1, the Committee had dealt with all of the issues together and issued one decision covering all of the complaints. The review application had raised no objection to this approach, and this review application has also considered these matters in the one review.

*Background*

[3] The Applicant who lives in [overseas] contacted the law firm after being served with Court proceedings by her former business partner (the partner) who sought orders

for the sale of a NZ property that they owned as tenants in common. There was a history of conflict between the Applicant and the partner, he eventually issuing court proceedings in NZ for the sale of the property. Although their ownership was registered as tenants in common in equal shares, it appears that the Applicant's equity in the property was significantly larger than indicated by the title.

[4] Before she contacted the law firm she had obtained from another lawyer (in a different NZ town) an estimate of likely fees for the sale of the property, and was given a fees indication of around \$4,000. The bill she eventually got from the Practitioners was for \$10,703.25. She considered this to be excessively high and wrote to the law firm to query the costs, and raising other issues at that time including the Practitioners failure to have provided the estimates she had requested. The reply she received failed to satisfy her. Her proposals to settle the account have been rejected by the law firm. She eventually made the complaint to the New Zealand Law Society.

[5] The Practitioners had acted for the Applicant from April until end of July 2009. The Applicant was dissatisfied with the outcome of her complaints to the firm and then filed similar complaints to the New Zealand Law Society. She identified four areas of grievance broadly covering the attitudes of the Practitioners towards her, duplication of costs, overcharging and that the Practitioners failed to promote her interests. Arising from these were specific complaints raising poor communication, failures concerning following her instructions, informing her of which lawyer was assigned to the case, providing costs information, lack of courtesy and that they were not free of compromising influences or loyalties. In her view these matters justified a review of the fee that was charged.

[6] As part of its investigation the Standards Committee appointed a costs assessor who upheld the bill as fair and reasonable. Both parties were given the opportunity to comment on the assessor's report. The earlier estimate given by the other lawyer was considered as not equivalent to the work that was actually undertaken by the Practitioners. After considering all of the information the Standards Committee adopted the costs assessment, and did not uphold any of the Applicant's complaints. The Committee concluded that there had been miscommunication or the misunderstanding of communication between the parties, but that the conduct of the lawyers did not reach the threshold that would constitute unsatisfactory conduct.

[7] The Committee's decision also included the comment that the lawyers should be aware that it is unlikely the complaint would have been lodged had they communicated more effectively with their client.

### *Review application*

[8] While it made no adverse finding, the Committee had stated that the complaint may not have arisen had the Practitioners communicated more effectively with their client, a comment that appears to have led the Applicant to the view that the Committee supported her complaints. She holds the view that the Standards Committee agreed with the essence of her complaint which was that there had been ineffective communication and that her lawyers should have communicated more effectively with her. In the light of this, she considered it “*severely unfair*” that she was nevertheless left to pay the full \$10,703.25 bill.

[9] The Applicant asked that this review address two matters arising from the Standards Committee decision, these being the “*misunderstanding of communication*”, and “*whether my lawyers conducted dealings with me with integrity, respect, and courtesy.*” She was of the view that the Standards Committee had not specifically addressed the concern of whether the lawyers had conducted their dealings with her with integrity, respect and courtesy. The Applicant asked for the complaint to be reinvestigated and that the Standards Committee decision be modified so “*as to reflect the share of professional obligations and responsibilities of [the Practitioners and the firm]*”, or alternatively to adjust the fees based on “*the allocation of responsibility [of costs] on the basis of the factual findings of the Standards Committee as they stand.*” Her view was that it was the responsibility of the lawyers to communicate clearly and effectively and that the Standards Committee had found that they had not done so.

[10] Both parties have agreed that the Application may be determined without a formal hearing and therefore in accordance with section 206(2) of the Lawyers and Conveyancers Act 2006 the matter is being determined on the material made available to this office by the parties.

### *Considerations*

#### *Standards Committee findings*

[11] I deal firstly with the Applicant’s perception that the Standards Committee agreed with the essence of her complaint that there had been ineffective communication on the part of the Practitioners, which had led her to question why the Committee had not adjusted the lawyers’ fee.

[12] I do not agree with the Applicant’s interpretation of the Committee’s decision. The Standards Committee made no adverse finding against the Practitioners, having

formed the view that the Practitioners' conduct did not reach the threshold that would constitute unsatisfactory conduct. Therefore there was no justification for a fees adjustment for that reason. For the sake of clarification, I will add that even if there had been an adverse finding, this would not necessarily have led to an adjustment of the fees in any event. An adjustment would have ultimately depended on the impact of the wrongdoing on the charges and whether there was a proper basis for an adjustment would have been considered with reference to the overall circumstances of the matter.

[13] The Standards Committee had obtained a Costs Assessor's report, which was based on the Assessor's examination of the full complaint file of the Standards Committee and a telephone meeting convened with the parties which had continued for more than an hour. The Assessor was aware of the Applicant's complaints concerning services provided by the Practitioners. He recorded that attempts had been made to explore whether the parties could reach a potential resolution of the costs aspect of the complaint but this had been unsuccessful.

[14] The Assessor prefaced his report by acknowledging that he was required to assess whether or not the fee is fair and reasonable in terms of Rule 9 of the Rules of Conduct and Client Care for lawyers. If he had found evidence of unnecessary attendances by the Practitioners it would have been open to him to bring these to the attention of the Standards Committee. However, he concluded that the fees charged were fair and reasonable remuneration for the services provided, having regard to the interests of both client and lawyers, and having regard to the factors set out in Rule 9.1.

[15] It was the responsibility of the Standards Committee to consider the report and also to form a view about whether the Practitioners had represented their client's interests to a standard expected of lawyers. The Committee accepted the fees assessment and its decision sets out the reasons for declining to uphold the complaints.

[16] The Applicant did not otherwise identify any errors on the part of the Committee other than contending that no consideration had been given to the complaint concerning the attitude of the lawyers towards her.

[17] The review process involves an examination of the Standards Committee action in regard to its investigation of the complaints and whether the final decision is properly supported by the evidence. Where the review process identifies failures in the processes of the Standards Committee this office has the power to consider the complaint and form a view of it.

[18] I have reviewed all of the information on the file, focusing on whether, in all of the circumstances, the conclusion of the Standards Committee concerning the Practitioners' communications was reasonable on the basis of the evidence. The Committee addressed the complaints involving instructions given by the Applicant, the manner in which the Practitioners provided the legal services, and the complaint concerning information about fees and the level of charging. I have read the entire Standards Committee file which comprises all of the information sent by the Applicant to accompany her complaint, the Practitioners' response made on behalf of both Practitioners and the law firm, together with their accompanying material, the Costs Assessor's report, the Applicant's comments on the Practitioners' correspondence, and the Practitioners' further comments. It is clear that the Committee fully comprehended the nature of the complaint, and took into consideration all of the information before it.

[19] My overall observation is that different perspectives were taken by the parties about many of the same issues. That is to say, the matters complained of were not largely or decisively supported by evidence of wrongdoing. It is the function of the Standards Committee is to decide whether any part of a Practitioners conduct breached professional standards applicable to lawyers, and this includes examination of whether the fee charged was reasonable for the work done. Standards Committees have wide powers of investigation and powers to address grievances, which include making adverse findings against lawyers where there has been a breach of Lawyers and Conveyancers Act 2006 or the Rules of Conduct and Client Care, and also to make adjustments to fees charged in appropriate circumstances. The Applicant's review application is based on a view that the circumstances warrant such an adjustment being made.

[20] Having considered all of the information on the file, and that provided for the review, I consider that the Committee was right to conclude that the conduct complained of did not reach the threshold for an adverse finding against the Practitioners in relation to the matter of communications. It was open to the Committee to make that finding, despite observing that communications could have been better.

*Complaint about lack of courtesy and respect*

[21] I now turn to that part of the complaint that the Practitioners failed to conduct their dealings with her with integrity, respect and courtesy. Chapter 3 of the Lawyers: Conduct and Client Care Rules 2008 govern the obligation of lawyers with regard to client service, which appears to be the rule relevant to the complaint. Rule 3.1 states:

- 3.1 A lawyer must at all times treat a client with respect and courtesy and must not act in a discriminatory manner in contravention of section 21 of the Human Rights Act.

[22] The Applicant considered that the Standards Committee had not explicitly addressed this part of her complaint. I noted that the reasons for the Standards Committee's decision included the following:

It was the lawyers' duty to fully and frankly advise (the Applicant) on the implications of her instructions and to discuss the best strategy for her case. Such advice and discussions are not an indication of a lack of support for the client nor a refusal to act on instructions.

[23] This suggests that the Committee did consider the complaints. It may be that the Applicant is under the impression that the Committee did not deal with this part of her complaint because no specific mention was made of the items of correspondence that gave rise to it. I have therefore considered the evidence concerning this complaint in the light of the Committee's decision to take no further action.

[24] The specific incident that gave rise to the complaint was the allegation that Practitioner 2 had referred to her as "*stroppy*" and that the Practitioners appeared to be on the side of her partner by viewing her rejection of his proposals as "*an expression of unwillingness to submit to what he saw as an attempt to dictate terms.*"

[25] The Applicant also referred to the response sent by Practitioner 1 to the Standards Committee as further evidence supporting the complaint, particularly the following extracts from the Practitioner's communications with the Committee: "*I formed the view (as I understand [Practitioner 2] had earlier) that one of the obstacles to settlement was [the Applicant's] apparent insistence that [the partner] agreed to her choice of agent and accountants, and of the process to be adopted.*" and "*It would seem likely that [the partner's] rejection of her proposals was, at least in part, an unwillingness to submit to what he saw as an attempt to dictate terms.*" And again, "... advised [the Applicant] that her insistence on some matters and her reluctance to compromise might give [the partner] and his lawyer the impression that she was being *stroppy* and trying to control the process."

[26] The Applicant considered that this demonstrated the Practitioners' empathy with her former partner, adding that neither of the Practitioners had made their opinions known to her at the time and so it seemed to her that there was no respectful ongoing dialogue.

[27] There was information on the file that elucidated these matters. The reference to "*stroppy*" arose in a telephone discussion between Practitioner 2 and the Applicant.

The Applicant's email sent to the Practitioner a few days later, and referring to the Practitioner's mention of "stropky", explained her frustrations with the partner's delaying tactics. Materially, there was no mention of any concerns about the manner in which Practitioner 2 had engaged with her. When the Applicant subsequently lodged a number of complaints to the law firm this was included in the complaints and in this way Practitioner 2 became aware that the Applicant had perceived the reference to "stropky" as a reference to her. In reply it was explained to the Applicant that this was not the view of Practitioner 2 who was attempting to explain that the Applicant's insistence on the sale process could be perceived by the other side as "stropky".

[28] It appears that the Applicant was not satisfied with this explanation because this issue also became part of the Applicant's subsequent complaint to the Law Society as a label put on her by Practitioner 2.

[29] Some of the background appeared to be pertinent to this complaint. The file included information that had been given by the Applicant to the Practitioners at the outset which explained her frustrations with the lack of co-operation by her partner in progressing the sale, his refusal to participate in negotiation by obstruction and delaying tactics. There were also the Applicant's emails outlining clear instructions to the Practitioners as to the processes for the sale. Her equity in the property was significantly larger than that of the partner and she considered that her sale proposals were entirely reasonable. They were not, however, acceptable to the partner and there were communications from his lawyer which made different proposals for the sale processes that the Applicant was unwilling to agree to. The evidence on the file clearly indicated that attempts to resolve these differences was causing delays the sale process.

[30] The Applicant had instructed the Practitioners to bring the matter to a conclusion as soon as possible, and preferably without the necessity of Court intervention. On the file were a number of emails in which the Applicant requested the guidance of the Practitioners in achieving a sale, and also emails showing that Practitioner 2 alerted the Applicant to concerns that the Applicant's specific proposals about process were hindering the progress of the sale.

[31] In one telephone exchange with the Applicant about a letter that had been sent by the partner's lawyer, Practitioner 2 had expressed her concerns that the Applicant's approach might appear as "stropky" to the other side. Practitioner 2 denied that this was her own view, explaining that she was conveying a view that could be formed by the other side. Having read the sequence of emails it seems to me that the evidence

supports the Practitioner's explanation. I am unable to find any instance where Practitioner 2 herself formed this impression of the Applicant, although it would be fair to say, and indeed confirmed by the lawyer's responses, that they perceived that the Applicant's approach to the matter as contributing to the difficulties in progressing a sale. This is of course not accepted by the Applicant who considered that all of her proposals were very reasonable.

[32] While that may well indeed be the case, the resolution of disputes between litigious parties is seldom resolved on the basis of rational proposals. Not infrequently lawyers are retained to advance a client's interests and are faced with the client's directions about how to conduct the proceedings which are judged by the lawyer as being unhelpful to a resolution of the matter. It is incumbent on the lawyer to make known to the client any matters that they identify as obstacles to progressing the work that is undertaken, and difficulties can arise where this challenges the client's approach to the solution.

[33] While a lawyer should not be criticised in a professional disciplinary forum for pointing out to the client any perceived obstacles, including those created by the clients themselves, the manner in which this is done may be subjected to examination with reference to Rule 3. An examination must take into account the entire circumstances of the matter. In this case it was appropriate that Practitioner 2 should have discussed with the Applicant the impact of her insistence that her proposals be followed, and the degree of assertiveness by Practitioner 2 needs to be considered in the context of the matter. The Standards Committee properly considered that Practitioner 2 had a duty to fully and frankly advise the Applicant on the implications of her instructions, and its decision to take no further action reflects the Committee's view that none was required.

[34] Having independently considered the entire matter I find myself in agreement with the Standards Committee's decision to take no further action. That is I do not consider that Practitioner 2 went further than was necessary to impress upon the Applicant her concerns, or that the language used was inappropriate. There is nothing to show that the Practitioner labelled the Applicant in the way that has been complained about. The Practitioner's advice was firm and clear, but in my view no part of the Practitioner's communications was inappropriate when considered in the overall circumstances of the matter. There is no part of the communications that justifies an adverse finding against the Practitioner in relation to Rule 3.1. It follows that there is no basis for a fees adjustment in this ground.



*Conclusion*

[35] This review has focused largely on the complaint concerning the manner in which the Practitioners engaged with the Applicant. However, I have reviewed the whole file because it was apparent that the Applicant was unhappy with the outcome. It is open to a Legal Complaints Review Officer to examine whether the evidence properly supports the Committee's conclusions. In my view the Committee's enquiry was detailed and sufficient. Like the Committee I have found no instances of conduct on the part of the Practitioners that meets the disciplinary threshold in respect of any of the complaints raised by the Applicant.

[36] I see no basis for taking a different view of the complaint than was taken by the Standards Committee. The application is declined.

**Decision**

Pursuant to Section 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

**DATED** this 4<sup>th</sup> day of April 2011

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Hanneke Bouchier  
**Legal Complaints Review Officer**

In accordance with s.213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

BI as the Applicant  
YP as the Respondent  
YO as the Respondent  
AAT Ltd as the Respondent  
The Wellington Standards Committee 1  
The New Zealand Law Society