LCRO 136 /09

CONCERNING	An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the Auckland Standards Committee 3 of the New Zealand Law Society
AND	**D EVESHAM** of Auckland Applicant

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

DECISION

[1] The New Zealand Law Society received a complaint from R Hastings against "Law Firm X". That complaint was made on behalf of A London. Mr R Largs is the principal of the Law Firm X and the complaint was initially treated as a complaint against him. Subsequently the Auckland Standards Committee 3 broadened its enquiry and resolved of its own motion to inquire into the conduct of other practitioners of the firm including Mr D Evesham.

[2] The nature of the complaint was that a sum of $1500.00 paid into the trust account of the Law Firm X by Ms London on 31 August 2005 had not been properly accounted for.

[3] The conduct in issue in this matter occurred between 2005 and 2007. Section 351 of the Lawyers and Conveyancers Act 2006 provides that a complaint in respect of conduct which occurred prior to 1 August 2008 may be considered only if it is about conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982.

[4] As such the standards applicable to that part of the complaint are those found in the Law Practitioners Act 1982, Solicitors Trust Account Rules 1996, Solicitors Trust Account Regulations 1998, and the Rules of Professional Conduct for Barristers and Solicitors (which have since been replaced). The pre 1 August 2008 disciplinary standards are found in ss 106 and 112 of the Law Practitioners Act 1982. The threshold for disciplinary intervention under the Law Practitioners Act 1982 was

relatively high and may include findings of misconduct or conduct unbecoming. Misconduct was generally considered to be conduct:

> of sufficient gravity to be termed ‘reprehensible’ (or ‘inexcusable’, ‘disgraceful’ or ‘deplorable’ or ‘dishonourable’) or if the default can be said to arise from negligence such negligence must be either reprehensible or be of such a degree or so frequent as to reflect on his fitness to practise.

(*Atkinson v Auckland District Law Society* NZLPDT, 15 August 1990; *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105). Conduct unbecoming could relate to conduct both in the capacity as a lawyer, and also as a private citizen. The test will be whether the conduct is acceptable according to the standards of "competent, ethical, and responsible practitioners" (*B v Medical Council* [2005] 3 NZLR 810 per Elias J at p 811). For negligence to amount to a professional breach the standard found in s 106 and 112 of the Law Practitioners Act 1982 must be breached. That standards is that:

> the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise as a barrister or solicitor or as to tend to bring the profession into disrepute.

[5] The Standards Committee concluded that the conduct of Mr D Evesham amounted to unsatisfactory conduct pursuant to s 12 of the Lawyers and Conveyancers Act 2006 and in particular that it was conduct unbecoming pursuant to s 12(b)(i). The Committee imposed a fine of $500.00 and costs of $750.00.

[6] Mr D Evesham applied for that decision to be reviewed. The matter was heard in person on 20 October 2009 with Mr D Evesham attending and represented by Mr Largs.

[7] I record some discomfiture that Mr Largs acted as advocate for Mr D Evesham in this matter. It became readily apparent that one of the possible issues was where blame lay for the wrongful dealing in trust funds (if they were dealt with wrongly). The Standards Committee had considered whether Mr Largs was at fault and concluded that this was not the case. However Mr Largs was drawn to defend not only the conduct of Mr D Evesham, but also the conduct of his firm and himself in the course of the review. I observe that Mr D Evesham is an employee of Mr Largs and Mr Largs has a clear interest in the proceedings. I observe that pursuant to ss 194(2)(c) Mr Largs could himself have applied for the review (as an employer of Mr D Evesham he has standing as a related person). Having identified this concern the matter proceeded.

Undertaking to reverse transaction

[8] In the course of the hearing of this matter Mr Largs seemed to accept that on the facts that were now available the funds had been dealt with in error and should not have been transferred to the sole account of Mr Chesterfield and taken as fees. Mr Largs offered an undertaking to reverse the transfer of the funds and deduction of fees and to return the situation to what it ought to have been. That is to say to credit an account in the joint names of Mr Chesterfield and Ms London with the funds. I accepted that undertaking and now record it.

Background

[9] On 30 August 2005 Mr Arbroath (who was Ms London's barrister) faxed a letter to Law Firm X for the attention of Mr Saltcoats. That letter stated as follows:

> My client is paying $1,500 cash into your office today, to be credited to a trust account in the name of XX Ltd. I propose the AA account of $900 be paid from this fund. Although not technically an XX Ltd "debt", it can be paid from the account with the consent of both parties.

[10] On 31 August 2005 Ms London paid $1500 into the office of Law Firm X. That payment was made in the context of ongoing relationship property issues with her ex-partner Mr Chesterfield for whom Mr Saltcoats of the Law Firm X acted.

[11] The sum appears to have been initially receipted as for the credit of Chesterfield/London as payment for "valuation" but this was crossed out. The AA account referred to by Mr Arbroath related to a valuation. The word "valuation" was replaced at some point with "on a/c of costs". This is drawn from the receipt book of the Law Firm X. The original receipt of Ms London was not available.

[12] Ms W Largs is employed by the Law Firm X (and is the wife of Mr Largs). She has provided a statement in this matter. She recalls Ms London stating that the sum was paid "for a shared account". Ms London was of course not a client of Law Firm X and there was no "shared account" with that firm. Ms Largs did not mention the fact that the receipt had been changed from for "valuation" to "on a/c costs".

[13] The funds paid by Ms London were incorrectly receipted as being on account of costs. This was not the intention of Ms London when they were paid in. This is apparent from the letter of Mr Arbroath. It is also consistent with the complaint made on behalf of Ms London which indicates a belief that the funds were to be used to pay certain bills. It is also confirmed by the statement of W Largs which indicates an understanding that the funds were to be used to pay "a shared account". It is also

consistent with an email of 4 September 2008 from Mr Hastings to the Law Firm X querying the use of the funds.

[14] Mr Saltcoats has stated that the funds were placed in an account in the joint names of Mr Chesterfield and Ms London rather than that of XX Limited to protect the funds from possible attachment by creditors of that company.

[15] On 8 September 2005 Mr Arbroath referred to the funds again in a letter to the Law Firm X. He appears to be responding to a suggestion that the funds be used to pay a different account. Mr Arbroath reiterated the view in his earlier letter of 30 August when he said that he considered "it would be more appropriate to use the $1,500 you are holding in trust to pay the AA invoice".

[16] I observe that the AA account (which was intended to be paid with the funds deposited) appears to have been independently settled. In a letter of 18 October 2005 from Mr Saltcoats to Mr Arbroath it is stated that Mr Chesterfield has paid half of that account and Ms London should attend to the other half. Although some confusion may exist as it also appears to have been paid from the proceeds of sale of a property in Sandringham by a firm who acted on that sale for both parties in October 2005. Nothing turns on this.

[17] On 22 September 2005 Mr Saltcoats wrote to Mr Arbroath and stating that an accountants invoice needed to be paid:

> We hold $1,500.00 in an account of XX Ltd. This money actually belongs to our client as it represents the proceeds of a sale of a motor vehicle belonging to him. This issue can be sorted out later but we hold instructions that this money in the meantime be applied towards payment of the account…

[18] The fact that Mr Chesterfield did not agree with Ms London as regards the entitlement to the funds did not change the obligations of the Law Firm X in respect of those funds. There is no obligation to receive funds into the trust account (particularly from a person who is not a client). However where funds are paid into a trust account on a particular basis (such as to be held in the name of XX Limited) or to be used for a particular purpose (such as the payment of a "shared account"). These obligations are strict and cannot be departed from because the client of the firm who claims an interest in the fund would prefer them to be dealt with otherwise.

[19] It is of concern that the funds were never held in an account in the name of XX Limited. The trust account records show that the funds were placed in the following accounts/ledgers:

31 August 2005	Receipted into account 4094/02 in the name of London and Chesterfield. Noted as "London – ex / 01 stake". The reference or project name for that matter was "XX Ltd".
10 September 2007	Transferred to account 3915/06 in the name of Mr Chesterfield alone. Noted as "o/costs".

[20] I observe that at the very outset the funds appeared to have been erroneously attributed to another file of Mr Chesterfield and Ms London in respect of Mäori Land which preceded the dispute. This was corrected on the same day and need not be considered further.

[21] The matter of the $1500 was not referred to by the parties between the end of 2005 and when the matter was raised in 2008 by Mr Hastings.

[22] It appears that Mr Saltcoats left the Law Firm X in 2007 and the carriage of Mr Chesterfield's affairs was picked up by Mr D Evesham. It was at this time that the funds were transferred from the ledger in the joint names of Mr Chesterfield and Ms London to Mr Chesterfield alone and then taken as fees. Mr D Evesham was responsible for the file.

[23] Mr D Evesham has stated (in his letter to the Law Society of 28 May 2009) that he discussed the issue of the $1500 with Mr Largs and after that discussion he indicated to the firm's accountant that it could properly be transferred from the joint account. He stated that at that time he was confused by the two ledgers.

[24] This was probably about the time that Mr D Evesham authored a memorandum to the firm's accountant stating "attached is a copy [of] a statement showing $1500.00 in an account. Please let me have a copy of the receipt if it is available". It appears that the receipt was not provided and Mr D Evesham, in his application for review, states that he found the receipt himself in April or May 2009. Given that the receipt-book is a central part of the trust accounting system which should be readily available it is unclear why the receipt was not obtained earlier.

[25] On 27 September 2007 Mr D Evesham wrote to Mr Chesterfield after reconciling the various matters and providing him with what he considered an accurate statement. The statement (dated 21 September 2007) showed the $1500 as credited to Mr Chesterfield and noted it as "further amount held in our trust account relating to sale of asset". Mr D Evesham said in that letter:

> Also included are payments of $1500 and $500 which relate to the sale of the property. While these payments have been shown as a credit, we would suggest that they are in fact funds which belong to you and Ms London and so should be excluded from the statement. We await your comments.

[26] This suggests that on 27 September Mr D Evesham was aware that the claim of Mr Chesterfield to the funds was dubious. It also seems to recognise that it was the proceeds of the sale of relationship property (although it failed to recognise the source of the $1500 as the payment by Ms London).

[27] In August 2008 Mr Hastings (authorised by Ms London) sought details of how the money had been dealt with. Ms Buxton (a solicitor at the firm) stated that Mr D Evesham had considered the request for information but that in light of the fact that Mr Chesterfield and not Ms London was their client in the matter they would not respond to the enquiry. The complaint was subsequently lodged.

The Inquiry

[28] A complaint was originally made by Mr Richard Hastings. He named the Law Firm X as the party complained against. The New Zealand Law Society complaints service received the complaint and it was referred to the Auckland Standards Committee 3. The complaint was forwarded to the Law Firm X and Mr Largs (the principal of that practice) responded to the complaint and other inquiries of the Committee. The Committee originally resolved to set the matter down to be heard. However the Committee rescinded that resolution and resolved to investigate certain matters of its own motion. As far as Mr D Evesham is concerned that resolution was:

> Whether R Largs t/a Law Firm X and/or D Evesham and/or Mr Saltcoats and/or Ms Buxton and/or any other employee of Law Firm X correctly dealt with and/or paid out the $1500 (or any part thereof) received from Ms London on or about 31 August 2005, from the firms trust account in compliance with section 89 of the Law Practitioners Act 1982 and the Trust Account Rules and Regulations enforced at the time, particularly having regard to rule 3(1) of the Trust Account Rules.

[29] This is of importance due to the argument of Mr D Evesham that he was not fairly put on notice of the nature of the allegation against him.

Submissions

[30] Written submissions were provided at the hearing of this matter and were supplemented orally. I observe that there are also a number of arguments which were

made in the course of the inquiry and application for review which were not specifically abandoned. The following were the key submissions for Mr D Evesham:

[a] The Committee made a finding that it did not have jurisdiction to make. It was stated that the finding of the Committee that Mr D Evesham was guilty of "conduct unbecoming" and therefore of "unsatisfactory conduct" was not open to it because the standard of unsatisfactory conduct only relates to conduct which occurred after 1 August 2008 (when the Lawyers and Conveyancers Act 2006 which created that standard came into force).

[b] The proceedings of the Committee did not adhere to the principles of natural justice and in particular that the notice of the resolution to undertake and inquiry failed to adequately inform Mr D Evesham of the matter under investigation. Reference was made to the New Zealand Bill of Rights Act 1990. Related to this submission was the argument that this putting of the allegation was too vague or contained too much duplication.

[c] The Committee proceeded against a number of lawyers "jointly and severally". It was argued that the Committee was not empowered by the legislation to conduct the inquiry in this manner.

[d] The Committee considered a report prepared by a staff member of the Complaints Service and that document should have been given to Mr D Evesham so that he could correct alleged errors. It was also suggested that the document contained "insinuations".

[e] The conduct complained of was undertaken in the course of providing regulated services and therefore could not be stated to be conduct unbecoming. Conduct unbecoming relates only to conduct outside of the provision of regulated services.

[f] The funds were held in the joint names of Mr Chesterfield and Ms London and therefore either party could direct how they were to be applied. On this basis it was argued it was open to accept Mr Chesterfield's instruction to take the funds as fees.

[g] The receipt showed that the funds were received on account of costs and that this was conclusive.

[h] The joint ledger in which the funds were held was dormant and as such it was proper to transfer it to Mr Chesterfield's sole ledger.

[i] In all the circumstances it was appropriate for Mr D Evesham (and the firm more generally) to act as he did. It was suggested that if there was any confusion that was attributable to the actions of Ms London and her counsel Mr Arbroath. It was suggested that there had been some inappropriate action by Mr Arbroath in writing to the Law Firm X and that had the communication been undertaken through a solicitor this would not have occurred.

[j] There was a degree of confusion about what the funds were for and that in light of this it was not objectionable (or at least not a breach that warranted discipline) for Mr D Evesham to authorise the funds to be transferred and taken as fees. It was also suggested that because Ms London (or her advisors) had not raised the issue of the $1500 previously or asked for a refund this was evidence that it was proper to credit the funds to Mr Chesterfield.

[k] Ms London was not Mr D Evesham' client it was not proper to communicate with her on this matter.

[l] It was also suggested by Mr D Evesham (in his letter to the Committee of 18 June 2009) that the firm had a lien on the funds in respect of costs owed by Mr Chesterfield.

[m] In general it was submitted that the decision of the Committee showed that it had not properly considered the matter and it had failed to refer to key facts (such as a file note of Mr D Evesham).

Privilege

[31] It was also claimed in the course of the Committee's enquiry that much of the information relating to the matter was privileged. It was never fully explained where or how this privilege was claimed. It should be noted that privilege attaches to a communication between a client and his or her lawyer. It is not at all clear that trust account records amount to such a "communication". Certainly they do not appear to meet the test of the communication made in the course of and for the purpose of the person obtaining professional legal services from the legal adviser; or the legal adviser giving such services to the person as set out in s 54 of the Evidence Act 2006. While those documents (in so far as they relate exclusively to Mr Chesterfield) are no doubt confidential to him, it is by no means clear that they are privileged.

[32] Even if there exist relevant documents which are privileged to Mr Chesterfield it does not follow that there is a right to refuse to disclose them on an enquiry of Mr D

Evesham by the Standards Committee. By s 147 of the Lawyers and Conveyancers Act the Committee is entitled to require any lawyer to produce a wide range of documents which will include documents which are privileged. It may be that where documents are privileged their contents will not be disclosed to other parties. In this regard I note that there is no statutory obligation on the Committee to disclose information it obtains in the course of its inquiry to the complainant or any other third party. The Committee also has a discretion not to disclose information in an investigators report under s 150 of the Act. This office has a similar power not to disclose evidence and information where good reason exists under s 208(2) of the Act. Clearly the fact that information is privileged this may amount to such a good reason.

[33] The fact that a solicitor may not claim privilege in respect of a demand of him or her to produce evidence in response to a professional complaint was determined by the English Court of Appeal in *Parry-Jones v Law Society* (1969) 1 Ch 1; [1966] 1 All ER 177. It is of note that the privilege in this case belongs to Mr Chesterfield and not to Mr D Evesham. Lawyer-client privilege gives Mr Chesterfield a right to refuse to produce those documents in any tribunal in which he is a party to proceedings. As such it is misconceived for Mr D Evesham to claim his client's privilege in respect of the enquiry to which he (and not his client) is subject.

[34] As far as Mr D Evesham is concerned the information he holds is not privileged and may be required of him. For the position to be otherwise would make the investigation of complaints by third parties against lawyers impossible. The fact that the relevant documents may be required to be produced does not affect their privileged status as regards Mr Chesterfield. It is well established that documents may be disclosed for a limited purpose without affecting privilege: *B v Auckland District Law Society* [2004] 1 NZLR 326. I observe that that case determined that B (a lawyer) could demand the return of certain documents on the basis of privilege where the documents related to proceedings in which the lawyer was a party. It was therefore the lawyer's privilege and not that of his client.

Jurisdiction

[35] The first argument in this matter was that the Committee did not have jurisdiction to make a finding of unsatisfactory conduct against Mr D Evesham. This argument proceeded on the basis that s 351 of the Lawyers and Conveyancers Act (the Act) states that a complaint may be made against a lawyer only in respect of:

> conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982.

[36] It was argued that this placed a limitation on the powers of the Committee because unsatisfactory conduct was not conduct in respect of which disciplinary nature could have been commenced under the Law Practitioners Act (the old Act). I observe that in the written submissions for Mr D Evesham the question of whether a finding of unsatisfactory conduct was possible was framed as a separate issue. However, the two matters are closely related and can conveniently be dealt with together.

[37] This argument is ill founded. The question is whether the acts or omissions of Mr D Evesham (i.e. his conduct) were of a kind which could have given rise to disciplinary proceedings under the old Act. A failure to properly account for trust funds is clearly conduct of such a kind. Accordingly the complaint was properly considered.

[38] The decision of the Standards Committee did not clearly set out the fact that it was considering the matter pursuant to s 351 of the Act and that its jurisdiction was limited accordingly. However, it clearly directed itself to consider whether the conduct of Mr D Evesham was in breach of his obligations under the Law Practitioners Act 1982 and/or the Solicitors Trust Account Regulations 1998. I am satisfied that the Committee was able to make the findings it did within the jurisdiction conferred by s 351 of the Act.

[39] This submissions appears to confuse the conduct complained of with the determination of the Committee. By s 152 the Committee may make one of three specified determinations. They are: to prosecute that matter before the Tribunal, that there has been unsatisfactory conduct, or to take no further action. The finding of unsatisfactory conduct may be made on a number of different grounds (set out in s 12 of the Act). To suggest that such a finding may not be made in respect of conduct which occurred prior to the commencement of the Act would mean that the Committee could not make a finding adverse to the practitioner at all and is left only with the powers to either prosecute on a complaint or take no further action on it. This cannot be the case.

[40] When a Standards Committee considers conduct which occurred prior to 1 August 2008 it must first satisfy itself that it meets the criteria set out in s 351. Namely that it concerns conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982. Once that threshold has been passed it may then consider whether any of the standards set out in the Lawyers and Conveyancers Act have been breached. If this is so the Committee may make orders under the Act but is constrained by s 352 to make only orders that it could also have made under the Law Practitioners Act 1982. The conduct of the Committee in this matter adheres to these requirements.

Natural Justice

[41] It was suggested that the Standards Committee did not adhere to the principles of natural justice in the way it investigated and considered this matter. In particular it was suggested that the notice of the resolution to undertake an inquiry failed to adequately inform Mr D Evesham of the matter under investigation.

[42] Reference was made to s 24(a) of the New Zealand Bill of Rights Act 1990 (the right of persons charged with an offence to be informed promptly and in detail of the nature and cause of the charge). Those provisions are of no relevance here. Proceedings before a professional body do not amount to the practitioner being "charged with an offence" (see for example *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) per Elias CJ at para [60], also *Chow v Canterbury District Law Society* [2006] NZAR 160 (CA) at para [32]). While the provisions of s 27(1) will apply to the proceedings of the Standards Committee that section does nothing more than affirm the right to natural justice which is not in doubt.

[43] Mr D Evesham was informed of the allegation against him by the Committee's notice of 7 April 2009 advising him that of its own motion the Committee had resolved to investigate:

> Whether R Largs t/a Law Firm X and/or D Evesham and/or Mr Saltcoats and/or Ms Buxton and/or any other employee of Law Firm X correctly dealt with and/or paid out the $1500 (or any part thereof) received from Anna London on or about 31 August 2005, from the firms trust account in compliance with section 89 of the Law Practitioners Act 1982 and the Trust Account Rules and Regulations enforced at the time, particularly having regard to rule 3(1) of the Trust Account Rules.

[44] That notice also contained twelve specific questions which Mr D Evesham was requested to answer. Some of those questions were not relevant to Mr D Evesham who was not involved in the matter in 2005. Of relevance were the following:

- Who dealt with the matter on 10 September 2007 when the London and Chesterfield account was debited and the account of AJ Chesterfield credited?
- Did Ms London authori[se] this transaction? If so, when, where and how? If the authorisation was provided in writing please provide a copy thereof.
- Who prepared the journal authority relation to the transaction of 10 September 2007?

- Please provide copies of the journal authority and of the journal.
- Please provide all file notes relating to the transaction of 10 September 2007.
- What role, if any, did you play in supervising the relevant transaction?

[45] Mr D Evesham complains that this was an inadequate notice of the nature of the complaint. His objections were variously framed:

[a] Mr D Evesham did not hold a practising certificate in August 2005, the date referred to in the notice – the date of September 2007 should have been included as the date of payment rendering the notice vague;

[b] No question of the factual issues and legal questions was properly put to Mr D Evesham;

[c] The notice did not specify which subsection of s 89 of the Law Practitioners Act was allegedly breached and/or which parts of the subjection were breached;

[d] The notice referred to the "Trust Account Rules and Regulations" and "rule 3(1) of the Trust Account Rules" and there are no such rules or regulations.

[e] By virtue of the lack of specificity Mr D Evesham was faced with having to consider multiple and duplicated complaints in a way which was unfair to him.

[46] It was observed that the Committee initiated an investigation of its own motion pursuant to s130(c) of the Act which empowers it to "to investigate of its own motion any act, omission, allegation, practice, or other matter that appears to indicate that there may have been misconduct or unsatisfactory conduct on the part of a practitioner…". It was argued that Mr D Evesham was not fairly put on notice of the "act, omission, allegation, practice, or other matter" which was under investigation.

[47] I have considered the process of the Standards Committee carefully. I have before me the entire Standards Committee file and have read it all. It is not tenable to suggest that Mr D Evesham did not know the nature of the allegation against him. The transactions in question where clearly identified by the questions asked by the Committee. The core question of whether the funds were properly dealt with was never in doubt.

[48] I observe that at the outset Mr D Evesham did not co-operate with the Committee in its investigation. He initially declined to offer a substantive response in a letter of 15 April 2009 on grounds which have little merit. He suggested that the officers of the Society were incompetent and were embarking on a "fishing expedition". A copy of the relevant receipt was provided at that time.

[49] On 16 April the Society responded. It did not accept Mr D Evesham refusal to answer its enquiries and Mr D Evesham claims of privilege. After a further prompting letter of 23 April 2009 Mr D Evesham responded on 29 April 2009. That letter did not provide the information requested. Mr D Evesham sent a further letter to the Society (for the attention of the Executive Director) on 1 May 2009. In that letter he objected to the process adopted by the Society and claimed it was exceeding its jurisdiction.

[50] By letter of 13 May 2009 the Society set out its understanding of the facts of the matter. That letter clearly outlined facts which, if correct, would mean that Mr D Evesham had transferred funds in breach of trust obligations.

[51] On 28 May 2009 Mr D Evesham sent a substantive response to the Society. A hearing on the papers was scheduled for 7 August 2009. Notice was given to Mr D Evesham on identical terms to the notice of the inquiry. Mr D Evesham provided submissions to the Committee on 18 June 2009. In those submissions allegations of a breach of natural justice was raised.

[52] The exchange of correspondence between Mr D Evesham and the Society shows that he could be under no illusions as to the nature of the allegations against him. There is no requirement in professional discipline to state the particular provision of legislation or rules that the practitioner may have breached. In this regard the reliance on *Kollar v Civil Aviation Authority* (14 May 1997, High Court, Christchurch, John Hansen J, AP76/97) was misplaced. That in that case the defendant successfully appealed a summary conviction for breaching the Civil Aviation Regulations. The charges flowed from a ballooning accident in which three people died. That kind of proceeding has little in common with a professional disciplinary process. In any event that appeal was upheld on the basis that the conviction rested on matters that went beyond the particulars relied on by the Crown. It was also found that the charges were duplicitous and breached s 16 of the Summary Proceedings Act 1957. I cannot see how those matters are relevant here.

[53] The issue was clear – did Mr D Evesham breach his professional obligations in dealing with the $1500 paid into the firms trust account by Ms London.

[54] There is no obligation for a Standards Committee to explicitly notify a practitioner of the exact findings that it might make or which (if any) professional rule is alleged to have been breached. While the laying of a charge is an appropriate procedure for the Disciplinary Tribunal the legislation makes it clear that the procedure of the Standards Committee is a summary in nature and may be partly inquisitorial. The obligation of the Standards Committee in this regard is found in s 141 of the Act which provides that the Committee:

> must send particulars of the complaint or matter to the person to whom the complaint or inquiry relates, and invite that person to make a written explanation in relation to the complaint or matter:

The more general obligation of the Committee the Committee to adhere to the principles of natural justice is set out in s 142(1). Where the matter goes to a hearing the procedure to be adopted (including the obligation to provide an opportunity for the lawyer to make submissions) is set out in s 153. These provisions have been adhered to.

[55] The issue of what guidance should be given to a lawyer who is the subject of a complaint was addressed in *B v Canterbury District Law Society* [2002] 3 NZLR 113 where at para [11] Randerson J stated:

> Generally, referring the letter of complaint for comment will be sufficient but if the letter does not make the substance of the complaint clear, the committee may need to clarify it for the practitioner.

[56] I observe that that case was decided under the provisions of the now repealed Law Practitioners Act 1982. Under that Act the Complaints Committees were empowered only to lay a charge or dismiss a complaint (with limited powers to impose costs orders). Under the Lawyers and Conveyancers Act the Standards Committees have considerably wider powers to make findings of unsatisfactory conduct (but not misconduct) and impose significant punitive and remedial orders. As such it is appropriate that Standards Committees and the Complaints Service ensure that the lawyer is aware of the nature of the allegations made against him or her. This may be either from the original complaint, by correspondence from the Complaints Service or from some acknowledgement by the lawyer demonstrating that they are aware of the nature of the allegations. Given the notices of inquiry and hearing and the exchange of correspondence between Mr D Evesham and the Society there can be no doubt that Mr D Evesham was fully aware of the nature of the allegations against him.

[57] It would not be proper to impose an onerous burden on Standards Committees or requiring any particular framing of the allegations made against the lawyer. However as

noted in *B v Canterbury District Law Society* [2002] 3 NZLR 113 at para [48] in some cases merely sending a letter of complaint will not be enough and it might be necessary to separately identify the particulars of the complaint intended to be considered. It was also noted there that if matters emerge in the course of the investigation which are not referred to in the complaints, there may be a need to inform the lawyer that these matters are to be considered. These obligations were met by the Committee in this case. The starting place is that it is for the lawyer, in full possession of all of the information, to address whether the course of conduct which is apparent from that information, falls foul of any of the applicable professional standards. Only where the original complaint is obscure and the nature of the allegation cannot reasonably be seen from the complaint on its face does an obligation arise on the Committee to point to particular matters of concern.

[58] Having examined the material and the responses of Mr D Evesham I am satisfied that he was fully aware of the allegation of breach of trust and responded to it.

[59] I note that in any event the substantive issues of whether there has been a breach of professional standards has been fully traversed on review. Even if there had been a breach of proper process by the Committee it is cured by the review procedure.

Proceeding "jointly and severally"

[60] It was suggested that it was not proper for the Committee to proceed against a number of lawyers "jointly and severally". It was argued that the Committee was not empowered by the legislation to conduct the inquiry in this manner.

[61] The Committee is entitled to regulate its own procedure within the constraints of the principles of natural justice and the provisions of the Act and rules made under it (s 142(3) of the Act). There is no prohibition on dealing with practitioners together where the complaint relates to a course of conduct in which they may all have been engaged. There are obvious practical advantages to such an approach. I was not able to discern any particular way in which Mr D Evesham was disadvantaged by the investigation being conducted in this manner or in which his right to a fair hearing were compromised.

[62] The procedure of the Standards Committee was not flawed in considering the conduct of a number of practitioners together in this way.

The internal report of the Complaints Service

[63] It was argued that it was not appropriate for the Committee to consider a report prepared by a staff member of the Complaints Service. It was suggested that if it was to be considered the document should have been given to Mr D Evesham so that he

could correct alleged errors. It was also suggested that the document contained "insinuations". I was not directed to any particular error in the document or any particular insinuation.

[64] Given the volume of documents in this matter (and the fact that it is only one of many matters before the Committee) there are obvious practical reasons for the Complaints Service to provide a briefing document for the Committee. It is obvious that in such a document the staff member must be careful not to usurp the fact-finding and decision making function of the Committee. The document in question in this matter gives a fair and accurate summation of the position of the parties and the facts in dispute. It recommended simply that the Committee determine the matter. I do not consider it to have been inaccurate in any significant way, or to contain any insinuations.

[65] I do not consider that it is necessary for the Standards Committee to provide such a document to the parties to an enquiry prior to deciding the matter. This is an internal document to the Committee and the Complaints Service. Given the nature of the complaints process this would simply invite quibbling over the contents of the document. This would impede the expeditious disposal of complaints.

[66] It is, however, appropriate for the Society to provide that document to parties once the matter has been determined should they request it (or more generally a copy of the Committee's file). If there is an error or other flaw in the document which has resulted in the determination of the Committee being flawed then this can be amended on review.

[67] The procedure of the Committee was not flawed in this regard.

"Conduct unbecoming"

[68] It was submitted that the conduct complained of was undertaken in the course of providing regulated services and therefore could not be stated to be conduct unbecoming. It was argued that conduct unbecoming relates only to conduct engaged in outside of the provision of regulated services. This argument was founded largely an assumption that the finding of conduct unbecoming was made under s 106 of the Law Practitioners Act 1982. It was argued that in that Act conduct unbecoming is used in distinction to "misconduct in his professional capacity". Findings of conduct unbecoming have been made in respect of conduct other than that undertaken in a professional capacity (see for example *Dean v Wellington District Law Society* 26/7/07, Randerson, Ronald Young, and Simon France JJ, HC Wellington CIV-2006-485-2961). However, this argument must fail for two reasons.

[69] First, even under the 1982 Act conduct unbecoming could relate to conduct in the course of practice. In *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514 at para 80 it was held that "each of the paragraphs of s 106 are intended to capture different kinds of conduct which may be more or less serious in a particular case. … There is no hierarchy of seriousness as between the paragraphs such that (a) is more inherently serious than (c), and nor do each of the paragraphs have to be considered relative to the others. Conduct is to be assessed in respect of the particular charge that has been brought. In *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 at para [74] the term was found to relate to both professional conduct and conduct outside the scope of practice.

[70] Second (and more importantly) the finding here was made under the Lawyers and Conveyancers Act 2006. Under that Act a finding of conduct unbecoming amounting to unsatisfactory conduct pursuant to s 12(b) of the Act may only be made in respect of conduct of the lawyer "which occurs at a time when he or she…is providing regulated services". The Standards Committee is only empowered to make findings under that Act and it was accordingly this standard which was breached rather than that found in s 106 of the old Act.

[71] It was suggested for Mr D Evesham that s 12(b) of the Lawyers and Conveyancers Act meant that the conduct outside of the practice of law had to occur contemporaneously with the provision of regulated services. This cannot be the case. The same framing is used in s 12(a) relating to the provision of services that fall short of the standard of competence or diligence required. Clearly that refers to legal services themselves. In any event conduct outside of the practice of law is dealt with in s 7 (1)(b)(ii) which expressly includes in the definition of misconduct conduct "which is unconnected with the provision of regulated services" but reflects on fitness to practise.

[72] It was therefore open to the Committee to make a finding of conduct unbecoming in this matter.

Joint funds may be dealt with at direction of one client

[73] It was submitted that the funds were held in the joint names of Mr Chesterfield and Ms London and therefore either party could direct how they were to be applied. On this basis it was argued it was open to accept Mr Chesterfield's instruction (if there was one) to take the funds as fees. Reference was made to the Trust Account Guidelines issued by the new Zealand Law Society (which were replaced in 2008) and the rule 5 of the Trust Account Rules 1996. That rule deals with the receipt and payment of trust money. The rule provides:

(1) every receipt, payment, transfer and balance of trust money must be recorded in a trust account ledger with a separate ledger account for each client and-

(a) the recording must as far as practicable be secure against retrospective alteration or deletion;

(b) no ledger account may contain money of more than one client, but a client's account may be subdivided into various matters.

(c) For the purposes of this rule, clients having a joint account are a single client.

[74] From this it was argued that because Ms London and Mr Chesterfield were together to be dealt with as a single client then it was proper to transfer the funds and take them as fees at the direction of Mr Chesterfield alone as part of the "indivisible client".

[75] I do not accept this interpretation of r 5(1)(c) of the Solicitors Trust Account Rules 1996. When read in context the purport of that rule is to clarify that it is not necessary to open up separate accounts under r 5(1)(b) where the funds belong to more than one client jointly. Rather in such a case they are to be treated as one client and a single account in the joint name is to be used.

[76] Rule 5(1)(c) does not permit a lawyer holding funds in dispute as stakeholder to accede to the request of his or her client as to the use of the money and to ignore the basis upon which the funds were expressly paid.

Receipt

[77] It was also argued that the receipt showed that the funds were received on account of costs and that this was conclusive as regards the purpose of the money.

[78] A lawyer receiving money into the trust account is of course obliged to ensure that the money is accurately receipted. The firm's copy of the receipt shows that it was originally noted as being for "valuation". At some point this was crossed off and replaced with "on a/c of costs". It was suggested that if Ms London did not object to the narration on the receipt then she could not now complain that it had been used to pay costs. This is not a convincing argument for a number of reasons. It was argued that Mr D Evesham was entitled to assume that the funds were held on the basis shown on the trust account receipt and ledger. In fact the funds were dealt with on the basis shown on the firm's copy of the receipt, but not the trust account ledger.

[79] When the funds were received into the trust account the trust account ledger in the name of London & Chesterfield show that they were received ”London – ex / 01 Stake” in the matter of “XX Ltd”. This is consistent with Ms London’s assertion of the purpose of the funds, and the letter from her barrister Mr Arbroath. It also accords with the statement of W Largs as to how the payment was made.

[80] In so far as the receipt states that the funds were paid on account of legal costs it is erroneous. It is not clear how that error occurred, but it cannot be laid at the door of Ms London. While the fact that funds were receipted erroneously may go to mitigate the gravity of a trust account breach (especially where the error is not attributable to the person who paid out funds in breach) the erroneous receipt cannot be used to found some kind of estoppel against the person entitled to the funds.

[81] While the receipt should be good evidence of the purpose for which the funds were paid in, in this case it was not. It was at variance with the instructions given by Ms London and her barrister. It cannot be said that because the firm failed to receipt the funds correctly and then adopted its own error in how it dealt with the funds there was no breach of trust. The obligation of Mr D Evesham (or any lawyer dealing with the funds) was to deal with the fund on the basis of the trust on which it was held. The erroneous receipt does not affect that fundamental obligation.

[82] This argument for Mr D Evesham further lacks merit because by his own admission he did not sight a copy of the receipt when he authorised the transfer of the funds and their appropriation as fees. He has stated that although he requested the receipt at that time it was not provided and only came to light in 2008 when the complaint was made.

The funds were a “dormant balance”

[83] It was argued that because the funds had been in the trust account in the joint names of Mr Chesterfield and Ms London for some two years that account could properly be considered as dormant and as such it was proper to transfer it to Mr Chesterfield’s sole ledger.

[84] By s 110 of the Act (s 89 of the old Act) a lawyer must “hold the money, or ensure that the money is held, exclusively for that person, to be paid to that person or as that person directs”. Regulation 3(1) of the Trust Account Regulations 1998 required a lawyer to “Account properly for trust money to his or her clients”. In the context of proper trust accounting practice this means that a lawyer should hold funds only for so long as is necessary to do the work or discharge the function in respect of which the funds were paid in. When the work is completed or function discharged the funds

should be paid out to the person entitled to them. Where the person entitled to the funds cannot be found the funds are to be paid to the Inland Revenue Department pursuant to s 337 of the Act (and s 90 of the old Act). It is not open to deal with the money in breach of the purpose for which it was paid into the trust account.

[85] In any event the account could not be said to be dormant in a way which required such action to be taken. It would have been reasonable to raise with Ms London or her advisors the fact that the money was still held as stakeholder and to seek some resolution as to how it ought to be dealt with. It is not open to a practitioner to unilaterally decide to transfer funds held in one account on one basis to another account on another basis simply because they have been there for some time.

[86] The fact that there had been no activity in the account in the joint names of Mr Chesterfield and Ms London did not justify the action of transferring the funds into an account in the sole name of Mr Chesterfield and taking them as fees.

General consideration

[87] It was argued that in all the circumstances it was appropriate for Mr D Evesham (and the firm more generally) to act as he did. It was suggested that if there was any confusion that was attributable to the actions of Ms London and her counsel Mr Arbroath. It was suggested that there had been some inappropriate action by Mr Arbroath as a barrister in writing to the Law Firm X and that had the communication been undertaken through a solicitor this would not have occurred. It was also argued that there was a degree of confusion about what the funds were for and that in light of this it was not objectionable (or at least not a breach that warranted discipline) for Mr D Evesham to authorise the funds to be transferred and taken as fees. It was also suggested that because Ms London (or her advisors) had not raised the issue of the $1500 previously or asked for a refund this was evidence that it was proper to credit the funds to Mr Chesterfield.

[88] It was suggested that in this case the breach in the payment of the funds was a mere error of judgement. Accordingly having occurred prior to 1 August 2008 it was not properly the basis of an adverse finding on the authority of *Re A* [2002] NZAR 452.

[89] I must consider whether Mr D Evesham conduct was a mere error of judgment which did not warrant an adverse finding, or whether it was conduct unbecoming. Conduct unbecoming is conduct that would not be considered acceptable according to the standards of "competent, ethical, and responsible practitioners" (*B v Medical Council* [2005] 3 NZLR 810 per Elias J at p 811). To consider this the wider context of the conduct under consideration must be considered.

[90] Mr D Evesham has pointed out that he was not an employee of the firm at the time that the funds were receipted. This is accepted and insofar as there were any errors or miscommunications in respect of the receipt of the funds they are not attributable to Mr D Evesham.

[91] However, Mr D Evesham was aware that the funds were not intended to be used at the sole direction of Mr Chesterfield. Indeed when writing to Mr Chesterfield in respect of these matters he stated in his letter of 27 September 2007 to Mr Chesterfield "these payments have been shown as a credit, we would suggest that they are in fact funds which belong to you and Ms London and so should be excluded from the statement. We await your comments". It is not therefore the case that Mr D Evesham was under the impression that Mr Chesterfield was entitled to these funds and that it was proper that they be appropriated as fees. In fact Mr D Evesham indicated the belief that they belonged to Mr Chesterfield and Ms London jointly. This was in fact the case.

[92] There was a suggestion at the hearing that this letter was in some way exculpatory in so far as Mr D Evesham was seeking clarification from Mr Chesterfield as to how to deal with the funds. I do not consider this to be the case. The obligations of Mr D Evesham in respect of how the funds ought to be dealt with are not to be determined by Mr Chesterfield. Rather they flow from the instructions given to the firm when the funds were paid in and any directions altering those instructions from the parties authorised to give such a direction. The proper way for Mr D Evesham to clarify the manner in which the funds could properly be dealt with would have been to carefully review the file. If Mr D Evesham had noted the date in which the funds had been paid in it would not have been onerous to look for some contemporaneous record in respect of how the funds were to be dealt with. Such an inquiry would have revealed Mr Arbroath's letter which made quite clear the fact that the funds were paid over to be held for a particular purpose unless both Mr Chesterfield and Ms London agreed otherwise. Mr D Evesham stated that he was not aware of the letter of Mr Arbroath. He observed that there were numerous documents on the file and that he had picked the matter up after Mr Saltcoats had left the firm. I accept that Mr D Evesham had not sighted the letter in question, however, in so far as this led to the wrongful appropriation of funds held on trust, I do not accept that this was an excusable and reasonable failure in the overall context.

[93] In making this finding I also observe that there was no evidence provided to me or to the Committee that Mr Jones had independent instructions from either Ms London or Mr Chesterfield that the funds be transferred across the accounts and applied to outstanding fees of Mr Chesterfield. The impetus for the transaction seems to have

come from Mr D Evesham when he issued invoices to Mr Chesterfield and undertook a reconciliation of his account. He was the person responsible for the file and on enquiry from Mr Largs stated that it was proper to transfer the amount and take it as fees. It was Mr D Evesham who gave those instructions to the firm's accountant.

[94] The fact that prior to that date Mr D Evesham had sent a memorandum to the firm accountant seeking a copy of the receipt in respect of the $1500 does not alter this. That memorandum is neutral as to the state of mind of Mr D Evesham. It suggests that Mr D Evesham was, quite properly, seeking to ascertain the entitlement to the funds at that time. Mr D Evesham has said in a statement (of 19 October 2009) that he did not locate the receipt at that time. Given that he did not sight the receipt in 2007 it cannot be claimed that it gave him grounds for believing that it was proper for the funds to be transferred to Mr Chesterfield's account and taken as costs.

[95] It should further be observed that the trust account ledger in the name of Mr Chesterfield and Ms London noted that the funds were "stake". It is commonplace for lawyers to hold funds as a stakeholder, particularly in relationship property matters. Where funds are held on trust as a stakeholder they are to be retained until the parties resolve how the money is to be dealt with (or the court provides a direction in the matter). The fact that the money was held as stakeholder was indicated by the narration on the trust account ledger and would have been apparent from Mr Arbroath's letter.

[96] At the hearing I asked Mr D Evesham what his state of knowledge was in respect of the entitlement to take the funds as fees. He responded by stating that he had no knowledge that the money was held on the terms set out in Mr Arbroath's correspondence. I also asked whether he was certain that he was entitled to take the funds as fees. He responded equivocally stating that he had pointed out to Mr Chesterfield that he may have to refund the amount as it was relationship property money. I then asked Mr D Evesham whether it was conceivable to him at the time that the money that was taken as fees was not Mr Chesterfield's money. He responded by conceding that it was conceivable to him at the time that it was relationship property money. In response to that I put it to Mr D Evesham that in light of this it was money to which, to his knowledge, Ms London was entitled to jointly with Mr Chesterfield. Mr D Evesham responded by stating that the situation was unclear and referred to the manner in which he had reconciled Mr Chesterfield's affairs and wrote to Mr Chesterfield noting that the money may have to be refunded. I also put to Mr D Evesham that he knew the money was disputed. He replied by stating "clearly it was disputed".

[97] I am of the view that Mr D Evesham had knowledge sufficient to put him on notice that it was not appropriate to transfer the money and to take it as fees. While he may have been unaware of the precise basis upon which it was held he knew that it was not held for the sole benefit of Mr Chesterfield. With this state of knowledge it was incumbent on Mr D Evesham to undertake further enquiry and investigation of the firms records (and if necessary of Ms London or Mr Arbroath) to satisfy himself who was entitled to the funds.

[98] In respect of funds held on particular instructions the fact that those instructions do not accord with the wishes of a client who claims an interest in the funds is of no moment. The lawyer's obligation is to deal in the funds in accordance with the instructions under which they are held: *New Zealand Home Bonds v Singh*) High Court Christchurch Registry, Christiansen AJ, CIV 2008 409 584, 4 September 2008). It is not open to a lawyer (or other professional) holding funds in trust as a stakeholder to apply them on the instructions of only one party: *Brudenell-Bruce v Pravan Enterprises Ltd* [1997] DCR 1.

[99] I observe that in *Sullivan & McGlashan v Complaints Committee of the Canterbury District Law Society* (High Court, Christchurch, 3 August 2009, Pankhurst, Gendall and French JJ, Civ 2008-409-002590) a finding of misconduct was upheld and a fine of $5000 was imposed where a lawyer had taken fees from funds held for one client to pay the fees of another related client.

[100] In that case it was noted that the obligations of a lawyer to account properly for funds held on trust are "fundamental". I also note that in that case it was found that the practitioners had not acted in good faith or with an honest belief of an entitlement to the funds. In the present case Mr D Evesham acted as he did knowing that the entitlement to the funds was questionable and without making the further enquiries that an ethical and responsible practitioner would have made to be sure that the proposed course of action was permissible. This was a reckless failure to enquire or wilful blindness to the facts. While this is not the "knowing and serious breach of a fundamental obligation" such as occurred in *Sullivan & McGlashan* it is nevertheless an unacceptable failure to adhere to the fundamental obligation to account properly for trust funds.

[101] In all of the circumstances it was open to the Standards Committee to conclude that the conduct of Mr D Evesham in all of the circumstances amounted to conduct unbecoming. I was able to make further enquiry of Mr D Evesham at the hearing. The responses to those enquiries did not lead me to conclude that the Standard's Committee finding was erroneous.

Inappropriate to deal with Ms London

[102] It was suggested that because Ms London was not Mr D Evesham' client it was not proper to communicate with her on this matter. This cannot be correct. If Mr D Evesham or the Law Firm X held funds as trustee for Ms London (or as stakeholder for Mr Chesterfield and Ms London jointly) it was obliged to account to her for them. While it could obviously not disclose information confidential to Mr Chesterfield this duty did not create any barrier to the proper discharge of the obligation to account owed to Ms London. It is also the case that the relationship property matters were ongoing between Ms London and Mr Chesterfield. Ms London was legally advised. There was no bar whatsoever to Mr D Evesham raising the issue of how the funds were to be dealt with Ms London or her advisors.

[103] I also note that Ms London was a "client" of the Law Firm X at least as regards the obligation to account to her for the funds. Rule 2 of the Solicitors Trust Account Rules 1996 provide that a "client" includes any person on whose behalf money is, or securities are, held by the solicitor.

Lien

[104] It was also suggested by Mr D Evesham (in his letter to the Committee of 18 June 2009) that the firm had a lien on the funds in respect of costs owed by Mr Chesterfield. It was held in *Heslop v Cousins* [2007] 3 NZLR 679 at para [190] that a solicitor has no lien or right of set-off if funds have been deposited into the solicitor's trust account for a particular purpose (see also *In Re Wright* (1984) 1 FCR 51). Chisholm J also made it clear that a lawyer may not exercise a lien when the client has given a direction as to how funds are to be used (at para [196]). The fact that funds are to be applied only as the client directs (or paid directly to the client) is a fundamental obligation of lawyers and is found in s 110 of the Lawyers and Conveyancers Act (and s 89 of the old Act). When funds are held as stakeholder, as they were here, the obligation of the solicitor is to hold the funds in accrodance with the terms of that stakeholding agreement.

[105] In any event even had a lien or right of set-off existed this would not have entitled Mr D Evesham to appropriate the money, but only to retain it. In *Johns v Law Society of New South Wales* [1982] 2 NSWLR 1 (CA) Hope J observed that when a solicitor holds money for a client in his trust account, his lien (or in New Zealand right of set-off) does not mean that the money is not the money of the client. Rather the solicitor merely has the right to retain the money until his costs are paid.

Failure to consider / inadequacy of decision

[106] In general it was submitted that the decision of the Committee showed that it had not properly considered the matter and it had failed to refer to particular matters raised on behalf of Mr D Evesham. It was suggested that the decision of the Committee in so far as it related to Mr D Evesham was cursory. The decision of the Committee dealt with the complaint against Mr Largs and the inquiries on its own motion against Mr D Evesham and Mr Saltcoats. The decision recites the history of the complaint and the inquiry and the facts of the matter as determined at the on the papers hearing. It also summarised the position and arguments of Mr D Evesham and how the Committee dealt with the arguments. It separately considered whether the conduct of Mr D Evesham amounted to unsatisfactory conduct.

[107] In its decision the Committee noted that its procedure is "robust and summary". While Mr D Evesham did not appreciate the use of the word robust, suggesting it was an euphemism for flawed, there is no merit in his objection. The procedure of the Standards Committee is required to balance the right of the lawyer complained against to put all relevant information and arguments before the Committee for consideration with the need to expedite professional complaints and inquiries. In this case the procedure of the Committee was thorough and its decision (which ran to seven pages) provided adequate reasons. It was not necessary for the Committee to recite each document which was before it and how it impacted on its conclusions.

[108] It is sufficient for the Committee to set out the relevant law or legal standard being applied, the key facts which they relied on in their deliberations, and whether (in light of the facts as found) that standard has been breached: *Ansett Transport Industries (Operations) Pty Ltd v Wraith* (1983) 48 ALR 500; *Patel v Removal Review Authority* [1994] NZAR 419. The Standards Committee identified the matters it took into account and what material in particular led it to reach the decision it did. Its reasons addressed the points which Mr D Evesham had raised: *Re Poyser & Mills' Arbitration* [1964] 2 QB 467 per Megaw J at p 478. The reasons were sufficient to enable Mr D Evesham to read the decision and conclude: "even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging" (See *in Re Palmer and Minister for the Capital Territory* (1978) 23 ALR 196 at 206-7).

[109] In the present case the decision of the Standards Committee shows that it gave full consideration to the matters raised by Mr D Evesham, properly appraised itself of the facts and provided adequate reasons in respect of its decision.

Costs

Mr D Evesham has been unsuccessful in his application for a review of the decision of the Standards Committee decision in this matter. As set out in the Costs Guidelines of this office where a finding of unsatisfactory conduct is made or upheld against a practitioner costs orders will usually be made against the practitioner in favour of the Society. Those guidelines also set out a scale of costs which will generally be followed. That scale is intended to impose on the practitioner approximately half of the actual costs of the conduct of the review.

[110] Numerous arguments were raised on behalf of Mr D Evesham in this matter and consequently the review was quite legally and factual complex in nature. Mr D Evesham is referred to the Costs Guidelines of this office and invited to make any submissions in respect of costs within 10 working days. At the expiration of that period a costs order will be made.

Dissemination

[111] This matter was initiated by a complaint by Mr Hastings on behalf of Ms London. That complaint was directed against "the Law Firm X" and treated as a complaint against Mr Largs. As matters progressed the Standards Committee resolved to investigate the conduct of Mr D Evesham of its own motion, however, I observe that the conduct related very much to the affairs of Ms London. I observe that pursuant to s 213 of the Lawyers and Conveyancers Act copies of this decision are to be given to the complainant (under ss 193 and 194). In substance Mr Hastings is the complainant in this matter and a copy of this decision will be provided to him. In the event that he were not entitled to a copy of the decision as the complainant, I consider it would be proper to exercise my discretion under s 206(4) to publish the decision to him in this limited way.

Decision

The application for review is declined pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006 and the decision of the Auckland Standards Committee 3 is confirmed.

DATED this 5th day of November 2009

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Duncan Webb
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:

Mr D Evesham as Applicants
Mr Richard Hastings as complainant
Mr R Largs as a related party
The Auckland Standards Committee 3
The New Zealand Law Society