

CONCERNING

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

AND

CONCERNING

a determination of the Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society

BETWEEN

B LOTHIAN

Applicant

AND

R ALLOA

Respondent

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

DECISION

[1] On 21 December 2008 Mr Lothian complained to the New Zealand Law Society in respect of the quantum of a bill of costs of Ms Alloa in respect of certain work she undertook for him relating to an employment matter. The account was for \$2542.50(including GST and disbursements) and was rendered on 2 July 2008.

[2] The matter was referred to an independent costs assessor who provided a report on 2 July 2009. The assessor concluded that the fee was fair and reasonable. I observe that he considered that the time spent on the matter was "far from excessive" and that the bill of costs was not unreasonable and consistent with local practice. He recommended that the fee be upheld.

[3] By a decision of 28 August 2009 the Standards Committee resolved to adopt the recommendation of the costs assessor and upheld the fee. Mr Lothian sought a review of that decision by an application of 24 September 2009.

[4] A hearing of the review application was conducted on 25 November 2009. Ms Alloa was not required to attend that hearing and did not attend. Mr Lothian attended and made submissions.

[5] Mr Lothian raised two main points. Firstly he argued that the matter was straightforward and did not require the level of attendances claimed. His second objection was that he did not accept Ms Alloa's time records as accurate.

[6] Mr Lothian is probably correct in his assertion that this was not a particularly complicated employment matter. Ms Alloa has not suggested otherwise and the costs assessor treated the matter as a routine employment issue. It was noted that because the employee (through his advisor) had elected to file directly in the Employment Relations Authority some additional attendances (such as filing a formal statement of reply) were needed. However, the assessor noted that even if this had not been the case he considered that the quantum of the bill would still have been reasonable.

[7] Mr Lothian raised a number of points where he considered less time had been spent on matters than was recorded. One such objection related to an initial meeting which he said took around 40 minutes, but was recorded as taking an hour. However, the narration to that attendance states "personal attendance, letter sent, letter sent". From this it can be assumed that the time spent related not only to the meeting but also to the drafting of two letters.

[8] Mr Lothian also stated that the mediation in this matter took some two hours and fifteen minutes and not the three and a half hours recorded. I note that the narration to that attendance states "Court preparation, Court". Mr Lothian does not appear to accept that any preparation was necessary (nor does he seem to allow for time travelling or waiting). He suggests that if preparation was required the amount of time spent was excessive.

[9] There is no evidence that the time recorded by Ms Alloa was not spent doing the work claimed. The costs assessor had Ms Alloa's time records available and did not consider the attendances excessive. In so far as Mr Lothian suggested that the time recordings were false, this is rejected as without foundation.

[10] Mr Lothian also observed that in the settlement agreement reached a payment of \$500 was made for the other party's lawyer's fee. He suggested that this was the amount the other lawyer charged and accordingly Ms Alloa's account should be reduced. It is not clear whether the \$500 was the amount of the other lawyer's fee or merely a contribution to it. I observe that the latter is commonplace. Even if the other lawyer had charged only \$500 this is not good evidence of what was reasonable for Ms Alloa to charge. I place no weight on this argument.

[11] I observe that there was no suggestion that the costs assessor acted inappropriately or that his views were manifestly unreasonable. The costs assessor

was appointed as an expert in the area and it is only with the greatest caution that such a view should be departed from on review.

[12] I also observe that the reasonableness of a bill of costs is not measured only by a calculation of the time spent on the matter. A number of other considerations are to be taken into account (which are now set out in r 9.1 of the Rules of Conduct and CLothianent Care). They include such matters as the skill, specialised knowledge, and responsibility required to perform the services properly; the importance of the matter to the client and the results achieved; the experience, reputation, and ability of the lawyer; and the fee customarily charged in the market and locality for similar legal services.

[13] On this basis the costs assessor concluded that the fee was fair and reasonable. Mr Lothian has not persuaded me that this was an unreasonable or erroneous conclusion to reach. The decision of the Standards Committee is upheld.

[14] By s 161 of the Lawyers and Conveyancers Act 2006 where a Standards Committee makes a final determination on a complaint made under section 132 in respect of costs, it must certify the amount that is found by it to be due to or from the practitioner in respect of the bill and under the determination. That section further provides that such a certificate is final and conclusive as to the amount due. It also contemplates that the Legal Complaints Review Officer may issue such a certificate on review.

[15] A certificate under s 161 accompanies this decision.

[16] I observe that Ms Alloa initiated a debt recovery process in respect of the amount owed including instructing an agency to take court action. Ms Alloa may face difficulties in litigating this matter in light of the rule that barristers may not sue for their fee: *Atkinson v Pengelly* [1995] 3 NZLR 104; *Re Le Brasseur and Oakley* [1896] 2 Ch 487, 493.

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 Waikato Bay of Plenty Standards Committee 2 is confirmed.

DATED this 26th day of November 2009

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:

Applicant
Respondent
The Waikato Bay of Plenty Standards Committee 1
The New Zealand Law Society

LCRO 148 /09

CONCERNING

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

AND

CONCERNING

a determination of the Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society

BETWEEN

Bing Lothian
of Hamilton
Applicant

AND

Rose Alloa
of Hamilton
Respondent

Certificate pursuant to s 161 of the Lawyers and Conveyancers Act

It is hereby certified that:

The amount of \$2542.50 is due to Rose Alloa from Bing Lothian in respect of the bill of Rose Alloa to Bing Lothian dated 2 July 2008.

This certification is made pursuant to s 161 of the Lawyers and Conveyancers Act 2006 and under the determination of the Waikato Bay of Plenty Standards Committee 1 dated 28 August 2009 and the decision of the Legal Complaints Review Officer dated 26 November 2009.

DATED this 26th day of November 2009

Duncan Webb
Legal Complaints Review Officer