LCRO 154/2010

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
BETWEEN	**MR REDRUTH** on behalf of **ETL** Applicant
AND	**MR DEREHAM** Respondent

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 Mr Redruth (the Applicant) against Barrister, Mr Dereham, (the Practitioner). The complaint related to an opinion provided by the Practitioner concerning legal liability of three lawyers. The complaint arose in respect of the legal opinion pertaining to only one of those lawyers, Mr F (or rather his Estate), hereafter referred to as 'F'. The Practitioner opined that a legal claim lay against the Estate, a proposition that was rejected outright in a Judgment later delivered by Randerson J in May 2009.

Background & Chronology

[2] When the Applicant and his former partner separated he discovered that a property agreement that he had believed was valid, was in fact not legally binding for the reason that it had not been certified by either of the lawyers acting for him or his former partner. The Applicant sought legal advice as to its enforceability.

[3] In January 2008 an opinion obtained from WH provided an overall scoping of the legal landscape concerning potential claims.

[4] In late March 2008 a further opinion was sought from Mr H; he considered potential liability against three lawyers who had been involved with the Agreement. The potential

liability of F was discussed only in the context of a contract-based claim, with the conclusion that there was no basis for such a claim..

[5] In early April 2008 the Practitioner was asked to provide an opinion. He provided a written opinion that discussed the legal liability against all three lawyers. In respect of a claim against F, the Practitioner opined that a claim lay in tort, having identified relevant principles in the case of *Connell v Odlun* [1993] 2NZLR 257, a case where the Court of Appeal had concluded that a lawyer could owe a duty of care to a person not his client.

[6] In later April the Applicant sought a further opinion, this time from Mr L of ME. This opinion supported the grounds for a claim against F in tort, which was assessed at about a 30% chance of success.

[7] On 5 May 2008 Mr S (the Applicants counsel) sent the L opinion to the Practitioner and instructed him with regard to the matter, beginning with sending letters to prospective defendants.

[8] On 14 May 2008 there was a meeting at Mr S's office, attended by him and the Applicant, and also the Practitioner and Mr L. The purpose of the meeting was to discuss litigation; at that point in time no proceedings had yet issued.

[9] In August 2008 a Statement of Claim was prepared by the Practitioner and Mr L and filed.

[10] In September a strike-out application was filed in respect of the claim against F.

[11] On 10 October 2008 a meeting took place between the Practitioner and Mr L, who met later that same day with the Applicant to discuss the strike-out application.

[12] In November 2008 submissions on the strike out application were received from the defendants.

[13] In January 2009 an opinion was sought from RF, which was available on 30 January 2009. The RF opinion referred to materials that had been considered, which I have understood to include the various (prior) opinions, the proceedings and the synopsis of submissions of counsel for the plaintiff opposing the strike-out application. Against this background Mr RF opined that all professional negligence claims against all three lawyers should be discontinued on such terms as could be negotiated. In relation to the proceeding against F, Mr RF considered there would be difficulties in establishing breach of any relevant duty owed to the Applicant, and he further expressed the view that the Applicant's reliance on *Connell v Odlun* was unlikely to be successful.

[14] In February 2009 Mr S forwarded the RF opinion to another lawyer, S, and sought his response to it. In his letter, Mr S referred to various aspects of the RF opinion, a letter that was cc'd to the Applicant, and also copied to the Practitioner.

[15] On 25 February a further meeting was held to further discuss the strike-out application. A decision was made to nevertheless continue with the claim.

[16] In May 2009 the matter was heard before Randerson J, who, grating the strike out application in relation to F, concluded that there was no basis for such a claim.

[17] The Practitioner had rendered fees to the Applicant which, at the date of the complaint, remained unpaid. It was apparent from the evidence that the Practitioner had attempted to recover his fees through the District Court and had obtained a default judgment that was later set aside for the reason that the Applicant had meanwhile lodged this complaint against the Practitioner. In its decision the Standards Committee included a reference to comments that had been made by the District Court Judge.

The complaint

[18] The essence of the Applicant's complaint was that the Practitioner had given erroneous advice to him, advice that he had relied on, which turned out to be incorrect. He could see no basis for paying the Practitioner the remainder of his fees for that reason.

The Standards Committee decision

[19] The Standards Committee investigated the complaint pursuant to s.152(2)(c) and determined to take no further action against the Applicant.

[20] In setting out its reasons the Standards Committee referred briefly to the background of the matter and the evidence. The Committee noted that the conduct complained of had occurred prior to 1 August 2008, that the complaints were essentially allegations of negligence and/or incompetence, and considered whether, in the light of the threshold set by s.351 of the Lawyers and Conveyancers Act 2006, (which precludes complaints against lawyers in respect of conduct occurring to 1 August 2008 unless the alleged conduct was such that proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982), concluded that the conduct complained of did not reach the required threshold. The Committee noted that in relation to such allegations, the negligence or incompetence would have had to be of such degree or frequency as to impact on the Practitioner's fitness to practice, or would otherwise tend to bring the profession into disrepute. On these considerations, the Committee decided to take no further action.

Reasons for review

[21] The Applicant sought a review of the Standards Committee decision essentially because he considered that the Standards Committee had taken into account and been persuaded by irrelevant considerations, and had failed to consider relevant matters. Written submissions presented by Mr S (for the Applicant) summarised the 'irrelevant considerations" as:

(a) Comments by a District Court Judge

(b) The time between the conduct occurring and the complaint being made

(c) Wrong professional standards were applied

(d) Factoring in opinions provided by other lawyers

[22] The 'relevant considerations' allegedly overlooked by the Standards Committee were:

(a) That lawyers need to give accurate and balanced estimate of success in litigation

(b) Whether the Practitioner's fees were reasonable

(c) Who was the party properly chargeable

[23] A review hearing was held on 20 October 2010. This was attended by the Practitioner. Also in attendance was the Applicant accompanied by Mr S, and another lawyer from Mr S's firm.

[24] I can immediately dispose of two of the above issues. I accept that the Standards Committee's mention in its decision in (a) and (b) in paragraph [19] above are not relevant to the complaint, but nor is it apparent that these factors influenced the Committee's decision. I nevertheless noted Mr S's submission that these irrelevant matters influenced the Standards Committee's perspective of the matter, eventually leading to a wrong decision. All other matters referred to above will be addressed in the course of this review.

[25] I have also considered the submission concerning the applicable standard against which the Practitioner's conduct is to be measured. The Practitioner's written opinion was delivered in early 2008, when the Law Practitioners Act was still in force, and it is clear that conduct occurring at that time falls to be considered under the professional rules applicable at that time.

[26] Mr S submitted that the conduct under consideration should not be confined only to the initial advice (of the written opinion), noting that "*much of the conduct complained of occurred post 1 August 2008."* He stated that four (of the six) bills of costs were rendered after the commencement of the Lawyers and Conveyancers Act 2006. I accept that the

conduct in issue crosses over both Acts, meaning that I accept that the Practitioner's services to the Applicant were not confined only to the April 2008 opinion, but continued after 1 August 2008 when the Lawyers and Conveyancers Act 2006 came into force. I do not agree, however, that the post 1 August 2008 services were confined only to the Practitioner's rendering of accounts, but also covered services to the Applicant after the date, much of which are covered by the accounts.

[27] I have discerned that the two main issues arising for the review involve (a) the Practitioner's legal opinion, and (b) the Standards Committee having taken into account the fact that the Applicant had received other legal opinions. Any question about the reasonableness of fees rests on the outcome of the above.

Applicant's position

[28] The nub of the complaint is that the Applicant considers that the Practitioner provided a legal opinion which turned out to be wrong. His complaint to the New Zealand Law Society referred to paragraph [40] of the Practitioner's opinion, which had stated: *"It follows that Mr F... owed a duty of care to* (the Applicant) *in complying with the terms of s.21(f). There was a breach of a duty of care at least by the failure to certify."* The Applicant noted that the only qualifications to the above related to practical matters such as insurance, limitation periods and the like, which *"did not significantly affect the thrust of the advice given"* . He referred to paragraph [45] of the Practitioner's opinion which stated, *"all that is necessary for a claim against Mr F... is to rely on the fact of non-certification".*

[29] The nub of the complaint is that the Practitioner advised him he had a good claim against F in professional negligence, and made no mention of litigation risk. The Applicant particularly questioned the Committee's conclusion that the Applicant *"must have been aware of the risks",* adding that the Committee had given no reasons for drawing that conclusion. He claimed he was unaware of any risks, and asserted that on the basis of the Practitioner's written opinion alone he had engaged him rather than another lawyer to issue proceedings against F, including defending a strike-out application. The Applicant pointed to that part of the judgment wherein Randerson J had stated *"…there is no reasonably arguable cause of action against the second defendant. The claim ..... is struck out accordingly.*" The Applicant wrote, "*I now see that* (the Practitioner*) failed to pay any or proper attention to the factors pointing to Mr F... not being liable identified by Mr H and the Judge."* He continued, *"I have refused to pay that balance because of* (the Practitioner's) *failure to properly advise me on the chances of success of the claim against Mr F...(as Mr H did).*"

[30] The Applicant's view was essentially that the proceeding against F was clearly ill-advised and futile, that he had proceeded with the claim solely on the basis of the Practitioner's written opinion, an opinion that was wrong, and therefore he should not be liable to pay the outstanding balance of the Practitioner's fee. The Applicant considered that the Standards Committee had not taken account of his concerns about the quality of the Practitioner's advice regarding the strength of his claim.

[31] Further submissions by Mr S (for the Applicant) were that information given to the Applicant by other lawyers about the litigation risks was irrelevant because the Applicant had not hired those lawyers or relied on them. In referring to the Committee's observation that the Applicant was aware of risks associated with the claim, Mr S submitted that this missed the point, which was that the Applicant had relied on the Practitioner's persuasive and favourable opinion.

[32] Mr S conceded that lawyers cannot possibly predict the outcome of litigation at the outset, but in his view the Practitioner's opinion was "bullish", that caveats were few and the Practitioner had omitted to identify the essential difficulties with the claim, namely, that it involved a novel area of law, would break new ground, that there was a risk of the claim being struck out before trial, and costs against the Applicant. Mr S added that it cannot be just that a lawyer should be able to charge for work which the Applicant may not have required had the Applicant been provided with a realistic assessment at the outset. The Applicant's position was that the Practitioner's opinion had provided an *"inflated estimate of chances of success of the claim and did not warn... of risks he ran in bringing it*.", that the Practitioner had stated that the claim against F was a "good claim" and that the Practitioner had encouraged the proceeding.

[33] On the matter of the Practitioner's fees, criticism was aimed at the Standard Committee's failure to have assessed whether they were reasonable in the circumstances, and the failure to determine the party properly chargeable. (This related to the Applicant's complaint that the Practitioner had sought to sue him personally rather than his trustee company).

The Practitioner's position

[34] The Practitioner considered that he had been given a limited brief to provide an opinion on the available causes of action against the lawyers, and had not been asked to evaluate the prospects of success or strength of such any potential claim.

[35] He also disputed that that the Applicant had relied solely on his written opinion. The Practitioner submitted that the Applicant had been fully aware of the litigation risks of a claim against F before commencing proceedings. He referred to the various opinions that had

been obtained by the Applicant, which had questioned the strength of a claim against F. He referred to the several meetings he attended, where, in the presence of the Applicant and other lawyers, he had participated in frank discussions about litigation risks, and had expressed his views along with others, that the prospects of a successful claim against F were low, and that the claim was a novel area of law. He added that these discussions also covered the prospects of success of the strike-out application filed by the defendant.

Considerations

[36] The first issue is whether a lawyer can be exposed to disciplinary sanction in providing a legal opinion to a client that turns out to be wrong. Academic writers are in general agreement that disciplinary intervention can arise for a lawyer in giving wrong advice only where a serious dereliction of duty has been found. Instances where professional sanction has been imposed against lawyers for giving incorrect advice include *DaSousa v Minister of Immigration* [1993] 114 ALR 708 FCA, and (*McDonald v FAI (NZ) General Insurance Company Ltd* [1999] 1NZLR 583). In respect of the latter case it was decided that the lawyer's conduct in bringing the case was inappropriate and the incompetent counsel was ordered to pay the insurer's costs. In reaching this conclusion the following test was applied:

> [The jurisdiction to award costs against lawyers] does not require serious professional misconduct. Mistake or error of judgment will not justify an order, but misconduct, default or even negligence is enough if that negligence is serious or gross. Neither will the fact that the case was lost be enough. All the circumstances have to be looked at. The jurisdiction is compensatory not punitive, but if the facts cry out for a remedy (as they do here) then the jurisdiction exists.

In *Ridehalgh v Horsfield* [1994] Ch 205, 244 (CA) the lawyer's error was not considered serious enough to invoke the Court's waive of costs jurisdiction. This because the law involved was complex, the authoritative words in the area gave no clear answer to the issue. The matter was minor and the lawyer was not a specialist in the area. In *Abraham v Justun* [1963] 1WLR at 658, Denning M R noted that it is an advocate's *"duty to take any point which he believed to be fairly arguable on behalf of his client.*"

[37] Conversely, a lawyer instituting civil proceedings that lack any legal foundation is an abuse of Court processes, squandering valuable Court time and resources, and also a dereliction of the lawyer's duty to the client and exposing the client to liability of costs. On this point G E Dal Pont's textbook, *Lawyer's Professional Responsibility*, states (at page 401):

> "Before commencing proceedings a lawyer must properly investigate the claims, or otherwise ascertain the relevant facts, to enable her or him (or counsel) to form an opinion whether a cause of action exists or is likely to succeed. Simply acting on client's instructions to commence proceedings or to prosecute a claim is inappropriate; reasonable inquiries must

> be made. This duty does not, however, go so far as to impose a pre-trial screen through which a litigant must pass before putting a claim or defence before the Court.
>
> A lawyer who, as a result of his or her enquiries, decides that no good cause of action exists must advise the client not to proceed. The challenge is to distinguish cases that are weak but arguable from those that are destined to failure. A lawyer may legitimately represent a client in the former type of action – provided, of course, that the client is informed as to the weakness of the case and the likely consequences of pursuing the matter – but not in the latter."

The author referred to *Steindl Nominees Pty Ltd v Laghaifar* [2003] 2 Qd R 683, 689 from which he quoted:

> "It is one thing to present a case which is barely arguable (but arguable nevertheless), but most likely to fail; it is quite another to present a case which is plainly unarguable and ought to be so to the lawyer who presents it.
>
> In my opinion, with respect, it is improper for counsel to present, even on instructions, a case which he or she regards as bound to fail because, if he or she regards it, he or she must also regard it as unarguable."

It seems to me that the above sets out the principles applicable to this matter.

[38] In support of his complaint the Applicant relies on the fact that the Practitioner's opinion on the cause of action was dismissed by the court as unsustainable. I observe that the opinion prepared by the Practitioner in early 2008 raised a relatively unusual legal issue involving a lawyer's duty towards a third party not his client. An observation made by Dal Pont is that *"The challenge is to distinguish cases that are weak but arguable from those that are destined to failure. A lawyer may legitimately represent a client in the former type of action – provided, of course, that the client is informed as to the weakness of the case and the likely consequences of pursuing the matter – but not in the latter*."

[39] The ultimate question is whether the Practitioner's opinion was so untenable that it was a view that could not be held by a reasonably competent lawyer. It is material to note that a subsequent opinion prepared by Mr L agreed that a tort action was available against F, and assessed that such a claim had a 30% chance of success. The relevance of noting this is that the Practitioner was not the only lawyer who expressed an opinion that a negligence claim might lie against F, with a second lawyer assessing a 30% chance of success. This suggests that the Practitioner's opinion was not so untenable as to have been one which could not be reasonably entertained by a lawyer. While the argument advanced subsequently failed, a conduct complaint is to be evaluated at the time it occurred. In the above circumstances it is by no means clear that the Practitioner's opinion, while turning out to be wrong, reached the threshold that could be described as "gross" negligence.

[40] That is not the only factor to be considered since a further aspect of the complaint is that the Practitioner failed to have included a litigation risk assessment in his opinion. The

Practitioner sought to limit the scope of the retainer, but given that the instruction was apparently given by way of telephone, it is not possible to verify what he was asked to do. I accept that the omission was a shortcoming of the Practitioner's opinion, and perhaps surprising that it is not included, especially since the legal opinion involved an unusual point of law. Whether this was an omission that is material to the question of the Practitioner's culpability needs to be considered in the larger context of the impact of the Practitioner's contribution (including the omission) to the Applicant's decision to commence litigation against F. This leads to the Applicant's assertion that he had relied solely on the Practitioner's written legal opinion.

[41] The Applicant acknowledged that he had previous litigation experience and that lawyers would usually include a comment about litigation risk in an opinion when previously advising him. As such an evaluation was conspicuously absent from the Practitioner's opinion, the question of the Applicant's reliance on that opinion alone should be examined. He was represented by counsel throughout, and in my view it is unlikely that the Applicant would have been advised (or himself considered it advisable) to proceed only on the basis of an opinion which did not include any comment on the litigation risk. I noted that in the same month as obtaining the Practitioner's opinion, the Applicant obtained a further opinion from Mr L, which supported the claim in tort, and gave it a 30% chance of success. That he should have sought such information is consistent with the Applicant's prior litigation experience that such an assessment should be obtained before pursuing litigation. In effect the omission in the Practitioner's opinion was supplied by the L opinion.

[42] This gives rise to the second part of the review application, which is whether the Standards Committee was correct to have included consideration of other legal opinions obtained by the Applicant, and if so, what was the basis for doing so.

Did the Standards Committee err in failing to confine its considerations only to the Practitioner's opinion

[43] The Applicant objected to the Standards Committee having taken into account that the Applicant had also received other legal opinions which had included advice about the litigation prospects. He considered the Committee was wrong to have taken into account any opinions other than that provided by the Practitioner in April 2008, as he considered that other opinions were irrelevant to the complaint against the Practitioner. He added that the Committee had not explained the basis for its conclusion that he had relied on other opinions.

[44] The chronology of events is recorded above and needs not be restated. I noted, as no doubt had the Committee, that by the end of April 2008 the Applicant had received written

opinions from both the Practitioner and Mr L, which in combination identified a cause of action in negligence and an evaluation of litigation risk. Therefore, by the time of the 14 May 2008 meeting there were on the table opinions from WH and Mr H (neither having considered a tort claim against F), and the two opinions from the Practitioner and Mr L that had discussed a tort claim. The meeting was attended by the Applicant, Mr S, the Practitioner and Mr L. That the purpose of the meeting was to discuss bringing a proceeding against three lawyers (which included F) was not disputed, and in any event it is inconceivable that the discussion between these individuals at that point in time would not have covered the prospects of success in the claim against F. The Practitioner stated that this was one of the meetings which addressed the litigation risk in the claim against F, and that he had expressed the view that the claim was *"novel and difficult"*. I accept the Practitioner participated in the discussion and that he expressed a view concerning the risk.

[45] Although the Applicant contended that he relied only on the Practitioner's written opinion of April 2008, the facts show that he had in fact received a number of legal opinions from several sources. Whether this is a tenable position lies at the heart of the Applicant's grievance that the Standards Committee took into account other views or opinions that were provided. This question needs to be considered in the overall circumstances of the complaint against the Practitioner. I noted that at the time of the May 2008 meeting the Practitioner had not yet been instructed to issue proceedings against F. However, at the conclusion of this meeting it was agreed that proceedings would be filed against the lawyers including F, and that the Statement of Claim would be drawn and settled by the Practitioner and Mr L, after first sending letters of claim. This means that *prior to* instructing proceedings to be filed (in August 2008) the Applicant had received a number of written opinions concerning a claim against F, and these had been analysed in the Applicant's presence by three lawyers, (including the Practitioner) who had discussed the litigation risk. This evidence clearly shows that when it came to deciding to proceed with the claim against F, the Applicant had been informed of the litigation risks involved.

[46] In addition to recognising that several lawyers had contributed to the pool of legal opinion, I have also considered the role of the Applicant's counsel, Mr S. Mr S denied having expressed any legal opinion in relation to the proposed proceeding against F. However, the evidence suggests that he did express views about the opinions of other lawyers, and that these views were conveyed to the Applicant. I refer particularly to two emails sent by Mr S. The first email sent on 5 August 2008 to Mr L, the Practitioner and the Applicant canvassed a number of issues relating to the still-prospective proceedings against all three prospective defendants. Mr S contended that any views he expressed did not relate to F. However there are references to the proceeding against F, and finally the comment;.. *"it follows from the above that my estimate of the chances of success are somewhat more*

optimistic than A's – I would probably go as high as 70% - but we are at the very early stages of the case and have yet to see what defences his insurer's lawyers will raise." 'A' is a reference to Mr L who had opined that the case against F had about a 30% chance of succeeding. It is not unreasonable to conclude that Mr S considered Mr L's assessment was too cautious. I note that this email was copied to the Applicant, and pre-dates the filing of the proceeding against F.

[47] The Statement of Claim was filed on 22 August 2008 and the following month a strike-out application was filed. On 10 October 2008 there was another meeting. Although the Applicant contended he was not advised about the risks of surviving the strike out application, on the balance of probabilities I consider it highly unlikely that a meeting between these three individuals at that point in time would have been for any purpose other than to discuss this issues. In this regard I accept the Practitioner's evidence that the strike-out application was discussed with the Applicant in some detail, and covered the possibility that the claim might be struck-out. The Practitioner wrote *"we gave (the Applicant) some odds of what the prospects were of the claim against Mr F.. being struck-out. He well knew the risk of proceeding."*

[48] In any event in January 2009 a further opinion provided by Mr RF who recommended that the professional negligence claim be discontinued. On 5 February 2009 Mr S sent a 2-page email to another lawyer, SS, attaching a copy of the RF opinion, and seeking SS's input. This is the second email in which Mr S offers comment on the litigation, with, *"I think RF's advice is valuable in identifying potential hurdles for the claim, but I have difficulty with his dogmatic assertion that it is worthless and should be discontinued immediately. I should make it clear that I am not acting on the claim; L and* (the Practitioner) *are. Ultimately they will have to answer RF's criticisms.*" This email was also posted to the Applicant, Mr L and the Practitioner. I do no more that simply note this as one more factor to take into account in deciding the basis of the Applicant's contention that he relied solely on the written opinion of the Practitioner.

[49] On the above evidence the situation may be summarised as follows. Before the Applicant gave instructions to file proceedings (in August 2008) he already had in hand written opinions from the Practitioner and Mr L which together agreed on a cause of action in negligence and an assessment of litigation risk, and had also participated in a meeting with the Practitioner, Mr L and his own counsel to discuss the claims and the risks in proceeding. There is little doubt that he received cautionary advice concerning litigation risk prior to instructing the Practitioner and Mr L to file proceedings against F. After receiving the strike out application there was a further meeting that involved the Applicant, a further opinion sought in relation to the strike out application, further correspondence to the Applicant and

another meeting between the lawyers and the Applicant, all focused on issues concerning the proceedings as they then stood. In this milieu the Applicant instructed that the lawyers file a claim against F, and then to continue with the proceeding, which was eventually, as noted, Randerson J granted the strike-out application.

[50] I return to the question of whether the Standards Committee was correct in taking into account that the Applicant had received legal opinions from other lawyers as well, rather than confining its considerations only to the Practitioner's written opinion of April 2008. I note that the Applicant's complaint had raised the issue of his reliance on the Practitioner's opinion alone. The Standards Committee was obliged to consider that aspect of the complaint. In my view it was open to the Committee to examine this question with reference to all of the available material. I have referred to the significant body of evidence that shows the legal views conveyed to the Applicant from not only the Practitioner but also from other lawyers, before instructing that proceedings should be filed. It was the Committee's view that the Applicant was aware of the litigation risks associated with pursing the claim. The Committee effectively rejected the Applicant's contention that had relied solely on the Practitioner's written opinion.

[51] Like the Committee I have no doubts that the Applicant was fully aware of the litigation risk at the time he instructed the lawyers to file the proceeding, and again later when, in the face of a strike out application, he instructed that the claim proceed. It would be naive and unrealistic to confine the Applicant's decisions solely on the written advice of the Practitioner (and thus hold the Practitioner responsible) for a decision made by the Applicant at a time when he was fully aware (from a range of legal opinions) of the litigation risks.

Fees related complaint

[52] The Standards Committee had dismissed the complaint against the Practitioner, and therefore gave no consideration to the additional complaint concerning the Practitioner's fees. Mr S confirmed that the fees complaint was parasitic on the conduct complaint. Thus an adverse finding against the Practitioner would have given rise to the fees complaint, and conversely a decision to dismiss the complaint would see the end of the fees complaint.

[53] Given the outcome of this review I also see no reason for pursuing any inquiry into the reasonableness of the Practitioner's fees, given that the complaint arises only in the context of the professional negligence complaint.

[54] In relation to the Standards Committee's failure to consider who is properly liable to pay the Practitioner's outstanding fees, this is a matter that the Applicant can raise in the District Court in the event that the Practitioner should resurrect his Court proceedings. It is

not a matter that the Standards Committee was required to address (nor this review) and in that regard I refer to s.138(1)(f) of the Lawyers and Conveyancers Act.

Decision

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

DATED this 10th day of November 2010

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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:

Mr Redruth as the Applicant
Mr S as the Applicant's Counsel
Mr Dereham as the Respondent
The Auckland Standards Committee 3
The New Zealand Law Society