

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the [Area Standards Committee X]

BETWEEN

LH

Applicant

AND

OE and UB

Respondents

DECISION

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

[1] Mr LH has applied for a review of the determination by [Area Standards Committee X] to take no further action in respect of his complaints about the conduct of Ms UB (who was then employed by EOE) and Mr OE. In particular, Mr LH has complained about the fees rendered by the lawyers.

[2] The fees rendered totalled approximately \$330,000 and Mr OE has advised there remains unpaid “over \$67,000 plus interest and recovery costs.”

[3] The Standards Committee did not appoint an assessor to report on the fees rendered by the lawyers but determined that they were fair and reasonable.¹

[4] The Standards Committee determination was signed by Ms DM as convenor.

[5] On 16 February 2017, Mr Vaughan wrote to the parties and proposed that the matter be returned to the Standards Committee pursuant to s 209 of the Lawyers and Conveyancers Act 2006 (the Act) to reconsider the complaint, on the basis that the Committee be directed to appoint a costs assessor to provide a report prior to the matter being determined. A copy of the letter is attached to this decision.

¹ Standards Committee determination (7 June 2016) at [24].

[6] Mr OE (on behalf of himself and Ms UB) agreed to that process.

[7] Mr LH's counsel (Ms CB) raised 2 issues prior to agreeing:

- (a) The contract for services provided an hourly rate. During the period when EOE acted for Mr LH the hourly rate was increased. Mr OE says he advised Mr LH of the increase. Mr LH disputes he was told and challenges the fees rendered at the increased rate.
- (b) Ms DM had a conflict of interest and the matter should not be returned to the same Committee.

[8] A teleconference was convened with the parties on 19 October 2017 to discuss the issues raised and the manner in which this review is to proceed. The teleconference was convened by Mr Vaughan, with Ms UB being represented by Mr OE. Mr Vaughan has been appointed as a Delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to cl 6 of sch 3 of the Act. The LCRO has delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

[9] After discussing the issues raised by Ms CB, both parties consented to this review being completed on the material to hand on the basis proposed in Mr Vaughan's letter of 16 February 2017. Mr Vaughan also enquired as to whether the parties were prepared to resolve the matter by mediation and both parties indicated they were amenable to that.

[10] The outcome of this review is set out in the following section of this decision.

Decision

[11] Pursuant to s 209 of the Act the Standards Committee is directed to reconsider Mr LH's complaints, in particular, the complaint relating to the fees charged by the lawyers.

[12] The following directions are made pursuant to s209(1)(a) of the Act:

- (a) The matter is to be referred to a different Standards Committee to consider. The reason for this is that it would have been preferable for Ms DM to have recused herself from membership of the Committee as she had acted briefly for Mr LH's former wife with whom he was in dispute.

- (b) The Committee is to commission a report from a costs assessor experienced in the type of work undertaken by the lawyers. The directions to the costs assessor are to follow the usual form and to include instructions that:
- (i) the lawyers' files are to be fully reviewed;
 - (ii) both parties and/or counsel are to be contacted and given the opportunity to make submissions/comments; and
 - (iii) the assessor's report is to be provided to the parties for final submissions / comments prior to consideration by the Committee.

[13] At the same time as the matter is being considered by the costs assessor the Committee is to appoint a mediator to convene a mediation between the parties, with a view to resolving the complaint by mediation.

[14] Reconsideration of the complaints is to be pursued with expedition, given that a significant proportion of the fees remain unpaid.

Other complaints

[15] It is acknowledged that Mr LH's complaints included matters other than his complaint about fees. Mr LH's application for review referred only to the issue of fees. In reconsidering the complaints generally, the Committee will need to address these other complaints, but in the first instance it is suggested Mr LH be invited to withdraw all complaints other than the complaint concerning fees, to enable the process to be focussed and expedited.

DATED this 20TH day of October 2017

D Thresher
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 LH as the Applicant
Mr OE and Ms UB as the Respondents
Ms CB as the Applicant's Representative
[Area Standards Committee X]

New Zealand Law Society