LCRO 166/2011

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of [A North Island] Standards Committee
BETWEEN	**MR AF** Applicant
AND	**MR BN** Respondent

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

Introduction

[1] Mr AF is a director of General Finance Limited. General Finance Limited instructed Mr BN's firm to act for it in documenting and securing a second mortgage advance over a property being purchased by a client of the firm.

[2] Through admitted fraud by an employee of Mr BN's firm, General Finance advanced funds to the client in excess of its lending limits, which prejudiced its security. The property has been sold by the first mortgagee and no funds were available to meet the liability to General Finance.

[3] Mr AF complained about Mr BN's role in the matter. The Standards Committee determined to take no further action in respect of the complaint and Mr AF has applied for a review of that determination.

Background

[4] In April 2007 the law firm of [Law Firm 1] employed Mr BO as a legal executive.[1] Mr BN and Mr BM were partners of [Law Firm 1].

[1] The letter from Mr BN offering employment to Mr BO referred to the position as that of a legal executive. Subsequently, in correspondence with the Law Society, Mr BN refers to the position as being that of a legal assistant.

[5] Mr BO had no formal qualifications as a legal executive. However he had worked for law firms in England for some four years and Mr BN had spoken to the senior partner of the firm in England (whom he knew) about Mr BO, who provided a good reference for him.

[6] Mr BO's CV states that he was engaged in work in the English firm which seems to be akin to that of the role of a legal executive in New Zealand.

[7] Mr BN advised that he and his partner were responsible for Mr BO's supervision, but on straight forward matters that role was undertaken by another legal executive.

[8] Mr BO developed a close working relationship with a Mr BP who worked from an office next door to the premises occupied by [Law Firm 1]. Mr BP was a mortgage broker.

[9] It would seem that Mr BP was instrumental in introducing clients by the name of [Client 1] to Mr BO in late December 2007. These clients had entered into an Agreement in August 2007 to purchase a property for $499,000. This was a new property under construction, and the Agreement was unconditional when signed. It provided for payment of a deposit of $20,000 and settlement on issue of the Code Compliance Certificate.

[10] By the time [Law Firm 1] were instructed, the date for settlement as established by the Agreement had passed, and the purchasers were unable to settle. On 21 December 2007, the vendor's solicitor issued a settlement notice pursuant to the Agreement. That notice was sent to both [Law Firm 1] and the clients' previous lawyers.

[11] It is assumed that the clients had turned to Mr BP to assist them to find finance, who in turn had recommended that they instruct Mr BO. The Christmas break then intervened so that the first attendances recorded in respect of this matter by Mr BO was on 21 January 2008.

[12] After Mr BO was instructed, Calibre Financial Services made a loan offer to the purchaser (who was now to be [Company 1]) of $381,500 to be secured by a first registered mortgage.

[13] A second mortgage for $75,000 was also offered by Blackbird Finance.

[14] Mr AF explained at the review hearing that General Finance Limited operated on two levels. The first was to find and underwrite funds for Calibre Financial Services, and the second was to act as a direct lender on second mortgage security. At this

stage, General Finance had been involved in the proposed transaction through the loan being offered by Calibre Financial Services.

[15] The two loans were not enough to enable the purchaser to complete settlement and on 22 January 2008 the vendor's solicitor advised that unless settlement was effected that day, they had instructions to cancel the Agreement.

[16] Blackbird Finance requested amendments to the Deed of Priority to be entered into between it and Calibre Financial Services. Calibre Financial Services responded, and advised that it was not prepared to consider amendments to its Priority Deed. Mr ZA, a lending manager for General Finance, was involved in those discussions and communicated with the broker (Mr BP) to see if he could assist in resolving the differences.

[17] On 25 January 2008 Mr BN became directly involved and wrote a detailed letter to Ms ZA at Calibre Financial Services, suggesting and requesting amendments to the document to enable the transaction to proceed.

[18] There then ensued communications between Mr ZA, Mr BP, and Mr BO which relate to the matters at the heart of Mr AF's complaint. On 25 January, Mr ZA sent the following letter to Mr BP:

> Hi [Mr BP].
>
> [xx] is prepared to consider doing a second mortgage of 10% plus fees.
>
> $54,500.00.
>
> $6,726.00 1st MTG fee and LMI
>
> This would mean clients must contribute 20% $109,000.00.
>
> If clients can find the funds to settle we can proceed.
>
> Regards,
>
> Mr ZA.

[19] It can be seen from this that Mr ZA understood that the purchase price of the property was $545,000. Confirmation of that was sought by General Finance and on 31 January 2008 Mr BO sent the following email to Mr ZD at General Finance, and copied it to Mr BP:

> Mr ZD,
>
> As per your request please note the following:
>
> 1. Purchase price - $545,000.00.
>
> 2. Clients instructions are that they won't be claiming GST.
>
> 3. Other than Calibre Finance and yourself the rest of the funds will be coming from clients family and friends overseas.
>
> Please do not hesitate to contact me if you require any further information or clarifications.
>
> Regards,
>
> [Mr BO]
>
> [Law Firm 1]etc.

[20] On the same day a letter was also sent by fax to Mr Mr ZD with the same wording except that after the purchase price in 1, the words "as per Sale & Purchase Agreement" were added in brackets.

[21] A further fax to Mr Mr ZD was sent on 1 February by Mr BO:

> Re: [Company 1]
>
> This is to confirm client contribution towards the above purchase required to settle is $109,000.00 from which client has paid deposit of $20,000.00 to the vendor, $49,000.00 client contribution to us and $40,000.00 borrow [*sic*] from family and friends from overseas.
>
> Please urgently forward Loan Documentation in order for us to settle forthwith.
>
> Yours faithfully,
>
> [Mr BO].

[22] Negotiations with General Finance resulted in a loan offer from the firm on 1 February to advance a loan of $64,756 on the security of a second mortgage.

[23] On the same day, Mr BO indicated in a hand written note to the vendor's solicitor, that his client was able to provide $461,000 towards the purchase price by 4 February.

[24] The vendor's solicitor responded, and advised that the vendor was not prepared to accept any further deferment of settlement, and cancelled the Agreement. That

letter was addressed to "[Mr BM/Mr BO]".[2]

[25] On 4 February, Mr BO wrote to the vendor's solicitor advising that their respective clients had agreed that the vendor would accept $461,000 to settle and that the balance would remain owing to the vendor to be repaid in two months, with a reduction in two to three weeks. The vendor finance was for $34,063.03 and was to be documented by way of a term loan agreement, and a mortgage instrument and agreement, so that the vendor could register a mortgage if required.

[26] The transaction proceeded on that basis. To draw down the loan from General Finance the firm provided a solicitor's certificate which was signed by Mr BN, the relevant details of which will be referred to later in this decision. General Finance was not advised of the need for vendor finance and proceeded on the assumption that the purchase price was $545,000.

[27] It was not until June 2010 when the IRD was investigating GST issues, that it became apparent to General Finance that the price paid to the vendor for the property was $499,000.

[28] Mr BO was charged before the Lawyers and Conveyancers Disciplinary Tribunal and admitted the fraud. As a result of that Mr AF has complained about Mr BN's conduct and seeks to recover losses.

Mr AF's complaints

[29] Mr AF holds Mr BN responsible for Mr BO's statements that the purchase price of the property was $545,000 and confirmation of the source of the client's contribution. Mr AF also asserts that it was known at [Law Firm 1] that the purchase price had been misrepresented. In addition, Mr AF refers to the content of the solicitor's certificate provided to General Finance by Mr BN and asserts that Mr BN has breached the terms of that certificate.

[30] In general terms, he considers that Mr Mr BN is responsible for the actions of his staff and to ensure that the certificate provided by him was correct.

The Standards Committee determination and the application for review

[31] The Standards Committee considered that the issues raised by Mr AF's complaint were whether, Mr BN had properly supervised Mr BO as required by Rule

[2] Letter from Vendor's solicitor to [Law Firm 1] (1 February 2008).

11.3 of the Conduct and Client Care Rules,[3] and that Mr BN had failed to advise Mr AF of the misrepresented price.

[32] Mr AF seeks compensation for the losses incurred by General Finance ($72,046.17), that Mr BN be censured, and ordered to undergo training in staff supervision. He also requested that the findings of the Committee be published.

[33] The Committee recorded its considerations and determination in the following way:[4]

> [17] Mr BN explained the steps taken by him to supervise staff and it was noted that at the time the advance was made and the lending documents signed, there was nothing which pointed to whether or not Mr BN could have uncovered the fraud at that time. Mr BN said there was nothing on the file which would have indicated any fraud because key documents had been removed.
>
> [18] Accordingly, Mr BN's failure to uncover the fraud did not in this case demonstrate an absence of competent supervision or management of his practice and employees; and therefore the Committee was not satisfied that Mr BN failed to competently supervise and manage as required by the RCCC 11.3 Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008.

[34] The Committee did not directly address Mr AF's submissions with regard to the certificate provided by Mr BN, or his submissions, put more directly in the review application, that Mr BN was vicariously liable for the fraud of his employee.

[35] In the review application, Mr AF noted that he expected Mr BN would have professional indemnity cover which covered fraudulent actions of employees which cause loss. He notes that he considers that the "LCS decision ... seems to suggest that an employer is not liable for the fraud of an employee, where the employer is also an unwitting victim of the employee's fraud."[5]

[36] Mr AF also takes issue with the finding of the Standards Committee that there was nothing on the file which indicated a fraud. He points to the faxes and emails of 31 January and 1 February 2008. In addition, he considers that there was enough information on the file that should have alerted Mr BN to the fact that the sums being advanced exceeded usual lending limits. He asserts that Mr BN would have been aware of these limits and that the amounts being advanced by the mortgagees should have raised his awareness to the extent that he should have investigated the situation

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[3] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[4] Standards Committee Determination dated 20 July 2011.
[5] Application for Review from Mr AF (28 July 2011).

further.

Review

[37] A review hearing took place in Auckland on 30 April 2013 attended by Mr AF, Mr BN and his counsel Ms BQ.

The applicable law

[38] At the beginning of the review hearing I drew the attention of the parties to the fact that the events complained of took place before the commencement of the Lawyers and Conveyancers Act 2006 (the Act) on 1 August 2008. Mr AF lodged his complaint on 9 August 2010. Consequently, the complaint falls to be dealt with under the transitional provisions of the Act. It is not clear to me that this was recognised by the Standards Committee as the determination refers to the provisions of the Conduct and Client Care Rules which came into force at the same time as the Act.

[39] The transitional provisions are contained within s 351(1) of the Lawyers and Conveyancers Act 2006 and provide that:

> If a lawyer ... is alleged to have been guilty, before the commencement of this section, of conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982, a complaint about that conduct may be made, after the commencement of this section, to the Complaints Service established under section 121(1) by the New Zealand Law Society.

[40] Sections 106 and 112 of the Law Practitioners Act 1982 provide that disciplinary sanctions may be imposed where a practitioner is found guilty of misconduct in his professional capacity, or conduct unbecoming a barrister or solicitor. The provisions relating to negligence and to criminal convictions are not relevant here.

[41] Misconduct is 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 a lawyer's fitness to practice.[6] The conduct complained of does not approach this threshold.

[42] Conduct unbecoming is perhaps a slightly lower threshold. The test will be whether the conduct is acceptable according to the standards of "competent ethical

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[6] *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 (HC).

and responsible practitioners".[7] It is against this test which Mr BN's conduct must be measured.

Supervision

[43] Rule 2.04 of the Rules of Professional Conduct in force at the time provided:

> A practitioner must ensure that each separate place of business is at all times under effective and competent management by a practitioner who is qualified, in terms of section 55 of the Act, to practice on his or her own account as a solicitor, whether in partnership or otherwise.

[44] Whilst it is accepted that a lawyer is responsible to ensure that employees are properly supervised, that did not, and still does not, extend to the situation where an employer is exposed vicariously to disciplinary proceedings for the conduct of employees. This is what Mr AF is asserting when he states in the review application that "the LCS decision ... seems to suggest that an employer is not liable for the fraud of an employee, where the employer is also an unwitting victim of the employee's fraud."

[45] Whilst it is possible to insure against fraud by an employee, that is different from assuming direct responsibility for the professional conduct of the employee, and it is the professional conduct of Mr BN with which this review is concerned.

[46] In *Re a Solicitor*,[8] the Appellant (a lawyer) had been charged with failing to comply with the Solicitors' Trust Account Rules by failing to properly write up clients' books of account, and that he had been guilty of professional misconduct in not keeping the books of account in a proper form. He employed an accountant, B, to check his accounts each year. B certified to the Law Society for each of the years 1967 to 1970 that the solicitor's accounts complied with the Trust Account Rules. In September 1970 an accountant appointed by the Law Society to inspect the solicitor's books of accounts, found that they had not been written up since 1967. B took the blame for that and said that he had misled the solicitor. He said that he had been unable to write up the books because he was ill and admitted that he should not have certified to the Law Society that the accounts complied with the Society's rules.

[47] The charges against the solicitor were made out and on appeal the Court held that:[9]

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[7] *B v Medical Council* [2005] 3 NZLR 810 (HC) at 811.
[8] *Re a Solicitor* [1972] 2 All ER 811.
[9] Above n7 at 815.

> on the charge of failing to keep the books written up in accordance with the accounts rules, the solicitor could not escape responsibility by handing over the books to B; he must answer for the failure of those whom he employed, and ought to have been aware that the books had not been written up since 1967.

[48] The charges were found proven against the lawyer because the lawyer clearly had the opportunity and means of establishing whether or not the accounts had been properly prepared. There was also an aggravating factor in that the lawyer was somewhat dilatory in rectifying the situation for several years.

[49] In another case, *Myers v Elman*[10] the Court held that:

> The jurisdiction of the Court to order a solicitor to pay the costs of proceedings is not limited to cases where he personally has been guilty of misconduct, but extends to a case where his managing clerk, to whom he has trusted the necessary work, is guilty of misconduct, as, for example, in the preparation and filing of incorrect and inadequate affidavits of documents.

This case related to an Order for costs being made against the lawyer, rather than disciplinary proceedings, but the principle involved related to whether or not the solicitor had properly supervised the clerk. This is not the same as assuming vicarious liability for the actions of an employee.

[50] The questions to be answered in this review is whether the deceit of Mr BO was such that a lawyer who was exercising the appropriate level of supervision and oversight would not have detected the fraud, and if the supervision and oversight was not to the required level, was the failing such that disciplinary proceedings could have been commenced against the lawyer.

[51] It therefore follows that Mr BN's supervision of Mr BO needs to be examined.

Was Mr BO adequately supervised?

[52] At the time Mr BO was employed by [Law Firm 1], he had four (plus) years experience of a paralegal nature with English law firms. He commenced employment with the firm in April 2007 and the events in question occurred in January/February 2008.

[53] Mr BO was employed as a legal executive to undertake routine conveyancing work in which he was supervised by Mr BN and his partner, and another legal executive employed in the firm. Mr BN advised the Law Society that Mr BO's work was

[10] *Myers v Elman* [1940] A.C 282.

"spot checked at various stages and generally when he sought directions from [Mr BN or his partner]."[11] Mr BN advised that he "would generally audit the file and ensure that [he] was able to sign the solicitor's certificate".[12] He also advised that he would check the e-dealing, the A & I form and the legal documents before signing the certificate. He would also ensure that there were sufficient funds to complete the transaction.

[54] When Mr AF made contact with Mr BN in July 2010 about this matter, he sent through copies of documents which included the correspondence of 31 January and 1 February 2008, referred to in [18] – [21] above, as well as a copy of the Agreement for sale and purchase which showed the increased purchase price. Mr BN says that this correspondence and the Agreement were not on the firm's file, and alleges that they had been removed by Mr BO.

[55] During the course of the review I requested Mr BN to forward his file to this Office. An inspection of the file reveals that it does not contain the correspondence or the Agreement and Mr BN's evidence in respect of this matter must be accepted.

[56] Mr BN states that even if he had seen the correspondence he would not have been alerted to Mr BO's fraud. This is somewhat difficult to accept, as the purchase price of the property as shown in the vendor's settlement statement was $499,000, whereas the correspondence certified a purchase price of $545,000. Falsely inflating the purchase price of a property has been a fairly common means of obtaining increased borrowing that has been widely publicised, and a conveyancing lawyer should have been alert to the possibility. However, Mr BN says he did not see the correspondence.

[57] The firm's client was in default of her obligations in terms of the Agreement for sale and purchase when Mr BO was instructed, and a settlement notice was served on 21 January 2008. This is a reasonably significant event in a conveyancing transaction, and one would expect that a supervising partner would want to become closely involved at that stage.

[58] Mr BN did become involved on 25 January 2008 when he communicated in some detail with Calibre Finance as to the terms of the Deed of Priority. It is not unreasonable to expect that at least by then he must have been aware that the firm's client was in default in settling the purchase and at risk of forfeiting the deposit. However, it seems from the file that Mr BN's involvement was limited to the fairly technical discussion as to the terms of the Deed.

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[11] Letter from Mr BN to NZLS (7 December 2010).

[59] Although Mr BN had sought an "urgent response" from Calibre to his letter, there is no indication on the file that one was received. Again, it is not unreasonable to expect that Mr BN should have been concerned to ascertain whether or not there was a response and what had occurred in relation to the Agreement for sale and purchase. However, it would seem that Mr BN took no further specific interest in this transaction.

[60] I observe that in view of the fact the purchaser was in default, and that there were difficulties in arranging finance, it would be expected that a supervising partner would have taken somewhat more interest in the transaction than Mr BN seemed to.

[61] At the review hearing, he indicated that he would have left it to the firm's accountant to ensure that there were sufficient funds to settle the transaction (notwithstanding his earlier advice to the Law Society that he would have been concerned to establish there was sufficient funds) and there is no evidence on the file of any calculations to record how the purchase price was to be met.

[62] When General Finance issued its loan instructions to [Law Firm 1], the firm assumed a direct responsibility to General Finance as its solicitors. That responsibility arose through the solicitor/client relationship, as well as by reason of the certificate provided by Mr BN.

The solicitors certificate

[63] Mr BN assumed a direct responsibility to General Finance by reason of the solicitor's certificate provided to enable the advance to be made. The two paragraphs of the certificate that have a bearing on this situation are:

> [1] We agree to act for General Finance Limited (at the Borrower's cost) to ensure that on settlement, all things necessary to enable the mortgage to be registered as a second mortgage will be obtained. If we become aware of anything that would alter this position whether on, before or after settlement, we will advise you immediately.
>
> ...
>
> [9] That after making due enquiry, there are no registered or unregistered interests or other matters which may defeat the interest of the Mortgagee over the Property.

[64] I accept that there has been no breach of either paragraph. The mortgage was registered and the interest of General Finance has not been defeated by the existence

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[12] Above n10.

of the vendor advance. Mr AF argues that if General Finance had been advised of the vendor finance, the company would not have approved the loan, or alternatively withdrawn it, and that as a consequence, this would have stopped the mortgage being registered. This is a somewhat strained interpretation of the content of the certificate, as a lawyer cannot be expected to second guess instructions of the financier. As far as Mr BN was concerned, the mortgage was able to be registered and there was nothing to defeat that security.

[65] However, the firm also assumed a general fiduciary duty to General Finance as the company's solicitor, and I am in no doubt that this extended to an obligation to advise General Finance of the fact that the purchaser did not have sufficient funds to complete the purchase without vendor finance. Mr BN would be well aware that this would have been a crucial piece of information to any lender.

[66] Mr BN was not directly aware of this information, but the question arises as to whether or not, if he had adequately and competently supervised Mr BO, he would have become aware of it. Until the review hearing, Mr AF was unaware of the vendor advance. He had assumed that the transaction had produced excess funds for the purchaser which would certainly have put Mr BN on notice that there had been borrowing in excess of commonly accepted loan to value ratios. However, there were no excess funds.

[67] It is my view that Mr BN was somewhat lax in his supervision of Mr BO. Once he became aware of the fact that a settlement notice had been issued and that there were difficulties with the loan that had been arranged with Blackbird Finance, he should have made sure that he was aware of how the purchase was being funded and if he had enquired, he would have been alerted to the fact that the lenders were lending in excess of usual limits. He would then at least have been put on notice that he needed to make further enquiry. He would also have become aware of the vendor finance.

[68] Having reached this view, it is necessary to refer back to the applicable law. As noted in [38] – [42] above the test is whether Mr BN's conduct is acceptable according to the standards of "competent, ethical and responsible practitioners".[13] It was said further in *B v Medical Council* that:[14]

> there is little authority on what comprises "conduct unbecoming". The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct

[13] Above n6.
[14] Above n6 at 811.

> which departs from acceptable professional standards. That departure must be significant enough to attract sanctions for the purposes of protecting the public. Such protection is the basis upon which registration under the Act, with its privileges, is available. I accept the submission of LQ that a finding of conduct unbecoming is not required in every case where error is shown. To require the wisdom available with hindsight would impose a standard which it is unfair to impose. The question is not whether error was made but whether the practitioner's conduct was an acceptable discharge of his or her professional obligations.

[69] I include here two examples where the standard has not been met. In *Woverhampton v Shaftesbury* the LCRO stated:[15]

> Taken as a whole, the Practitioner's approach towards his professional responsibilities in this matter amounted to an accumulation of negligent acts which, demonstrated a careless disregard on his part in meeting his responsibilities, not only in relation to the events in 2002 in failing to have properly completed the work he had undertaken, but also later in 2004 when, discovering that he was unable to account for the documents, his response was equally inadequate in addressing his earlier omissions and bringing the matter to a satisfactory conclusion.

[70] In *CI v XM*[16] the lawyer failed to complete a gifting program after having established a trust for the client, which resulted in the Official Assignee being able to recover the ungifted portion of a debt due to the bankrupt. The Standards Committee considered that this constituted unsatisfactory conduct by reason of being conduct unbecoming and that was confirmed by the LCRO.

[71] The determination as to whether or not Mr BN's conduct was sufficiently serious as to attract the possibility of disciplinary sanction pursuant to the Law Practitioners Act involves the exercise of judgement. There is no specific act or omission that can be pointed to as a clear example of conduct that falls into this category as there were in the examples provided in [69] and [70] above.

[72] The degree of supervision by Mr BN was somewhat less than what would be expected in the circumstances. The firm's client had defaulted in settling, a settlement notice had been issued, the client was at risk of forfeiting the deposit, and there were difficulties in arranging finance. In these circumstances, it would be expected that a supervising partner would have paid somewhat more attention to the file than Mr BN did.

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[15] LCRO 145/2009 at [58].
[16] LCRO 197/2010.

[73] However, after considering all of the facts, I have come to the view that Mr BN's conduct was not such that proceedings could have been commenced against Mr BN under the Law Practitioner's Act. In this regard I am applying the test applied by the Lawyers and Conveyancers Disciplinary Tribunal in *Waikato Bay of Plenty Standards Committee No 2 v [name suppressed]* where the Tribunal said:[17]

> ...we think the enquiry has to involve more than the simple proposition that proceedings of a disciplinary nature "*could"* have been commenced, in that it would have been possible to commence them, irrespective of whether well founded or not... It is not a matter of finally determining a charge when coming to this view, but considering whether conduct occurring at a time when the Law Practitioners Act was in force could properly have been the subject of a charge under that Act.

[74] It therefore follows that I concur with the determination of the Standards Committee to take no further action in respect of Mr AF's complaints.

[75] However, I do consider that Mr BN should have been somewhat more involved in supervising Mr BO after he had become aware of the facts of the situation and the outcome of this complaint may very well have been different if it related to events which took place after the commencement of the Lawyers and Conveyancers Act.

Costs

[76] Having reached my decision, the question of costs needs to be considered. I am of the view that the complaint by Mr AF, and this review application, were justified. Section 210(3) of the Act provides that:

> ...without finding that there has been unsatisfactory conduct on the part of a person ... to whom the proceedings relate, the Legal Complaints Review Officer may, if he or she considers that the proceedings were justified and that it is just to do so, order that person to pay to the New Zealand Law Society ... such sums as the Legal Complaints Review Officer thinks fit in respect of the expenses of and incidental to the proceedings and any investigation of that person's conduct or of that person's affairs or trust account carried out by, or on behalf of, a Standards Committee or the Legal Complaints Review Officer.

[77] In the circumstances, it is appropriate that Mr BN should be required to contribute to the costs of this review.

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[17] *Waikato Bay of Plenty Standards Committee No 2 v [name suppressed]* [2010] NZLCDT 14 at [64].

Decision

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

Pursuant to s 210(3) of the Act Mr BN is ordered to pay the sum of $800 by way of costs to the New Zealand Law Society, such sum to be paid by no later than 23 August 2013.

DATED this day 25th of July 2013

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O W J Vaughan
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 AF as the Applicant
Mr BN as the Respondent
Ms BQ as the Representative to the Respondent
Ms BN as a related person or entity
[A North Island] Standards Committee
The New Zealand Law Society
Secretary for Justice