

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the Nelson Standards Committee

**BETWEEN**

**MR and MRS AY**  
of [South Island]  
Applicants

**AND**

**MR YY**  
of [South Island]  
Respondent

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

**DECISION**

[1] Mr [X] and Mrs [X] AY (the Applicants) sought a review of a decision made by the Nelson Standards Committee on their complaint against Mr YY (the Practitioner). The complaint was not upheld by the Standards Committee.

[2] The Practitioner had acted for the Applicants in regard to a "AAP Loan" and sent them a bill for \$1,458.37 (inclusive of GST and disbursements). They were dissatisfied with the amount of the account. After receiving the bill, and in order to 'test' the quantum, they sought "quotes" from three other law firms which, in each case, mentioned a fee that was less than \$650.

[3] The Applicants then wrote to the Practitioner to say that they believed his charges were excessive. The Practitioner contacted other law firms concerning appropriate fees and responded to the Applicants' letter with an amended (reduced) bill.

[4] In declining to uphold the complaint, the Standards Committee relied on the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standard

Committees) Regulations 2008, in particular Rule 29 which deals with complaints relating to bills of costs. This Rule provides that the Committee must not deal with such a complaint if the bill relates to a fee that does not exceed \$2,000 exclusive of GST. This Rule applies unless the Standards Committee determines that there are special circumstances that would justify otherwise. The Committee did not consider that there were any special circumstances in this case that would warrant the complaint being considered.

[5] The Committee further noted that the Practitioner had reduced the account after being contacted by the complainants, and finally adding that there were other avenues of remedy available to the Applicants pursuant to Section 138(1)(f) of the Lawyers and Conveyancers Act 2006 (the Act). For the above reasons the Committee determined to take no further action pursuant to Section 138(2) of the Act.

[6] The Applicants sought a review of the Standards Committee's decision mainly for the reason that they remained of the view that the Practitioner's bill was excessive, even at the reduced rate. They wrote, "*We acknowledge that our complaint is under \$2000 – but it is for many hundreds of dollars, and that is not a fair go*". They sought a considerable reduction in the fees, mentioning a figure of between \$450 and \$650 that they had expected would have been charged.

### **Considerations**

[7] The Applicants' expectations about fees appear to have originated from advice they claim to have received from the AAP Limited which had approved their loan application. It appears they were given advice that the legal services would cost between \$400 and \$600.

[8] They contacted the Practitioner to undertake the work but did not seek a quote at that time and were dismayed to receive his account which they were not expecting to be so large. They wrote to the Practitioner about this after having been informed by other laws firms of what their charges would have been.

[9] The evidence shows that after receiving the Applicant's letter the Practitioner made some inquiries from colleagues concerning the appropriate charge, and then wrote to the Applicants with a revised account for \$1000 inclusive.

[10] The Practitioner provided the Standards Committee with a copy of the letter he had sent to the Applicants concerning his inquiries which showed that he had advised the Applicants in the following way: "*I have been advised that the costs are not less*

*than \$1,000 because of the additional requirements placed on solicitors in respect of such loans.”*

[11] The Practitioner informed the Standards Committee that he had also made an inquiry of AAP Limited and was told that no advice was given to borrowers about the level of legal fees they might expect. This clearly contradicted the Applicants’ evidence to the Standards Committee that they had received advice about the likely cost of legal services.

[12] The Practitioner also informed the Standards Committee that loan applications for equity release mortgages were somewhat unusual, and although he had done such mortgages in the past, there had been considerable gaps between them, such that on receipt of new instructions he again similarly advised himself with the guidelines for such mortgages as set out in the Property Law Section of the New Zealand Law Society.

[13] There is contradicting evidence between the parties concerning the matter of what indications had been given by the lender as to an appropriate level of fees. However, I do not consider this to be decisive because even if it was the case that the lending company gave such an indication to the Applicants (and I make no finding on this point) there is no reason why a lawyer should be fixed with a fees estimate given by an unrelated party. Nor could any useful estimate have been given in any event by a party who was in all likelihood unfamiliar with all of the legal requirements surrounding a loan of the kind that had been approved for the Applicants.

[14] Nor in my view is it reasonable for the Applicants to have placed so much reliance on estimates given by other law firms which did not have in front of them the specific details involved in the Applicant’s loan application.

[15] I am persuaded, by the actions taken by the Practitioner, that he took appropriate steps to reconsider the fee. He showed a willingness to revise his fee after he had discussed with colleagues what had been involved in the retainer. The Practitioner demonstrated that he was open to reconsidering the fee and in fact did do so after discussion with colleagues that would no doubt have been based on the actual attendances involved in the matter.

[16] The Standards Committee properly turned its mind to the question of whether there were any ‘particular circumstances’ that would justify further inquiry. In this case I agree with the Committee that the Applicants have not demonstrated that there were any “special circumstances” such as to warrant the Standards Committee making

any further inquiry into the complaint than was undertaken. Nothing in the evidence suggests that any professional conduct issues arise.

[17] The bill is clearly under \$2,000. In the absence of any special circumstances the Standards Committee was barred from further inquiry. This was sufficient to have disposed of the complaint, makes it unnecessary for me to refer to any other parts of the Standards Committee decision.

[18] I have no reason to take a different view to that taken by the Standards Committee. For that reason the review application is declined.

### **Decision**

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

**DATED** this 23<sup>rd</sup> day of March 2011

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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 and Mrs AY as the Applicant  
Mr YY as the Respondent  
The Nelson Standards Committee  
The New Zealand Law Society