LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2020] NZLCRO 117

Ref: LCRO 176/2019

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
BETWEEN	**LJ** Applicant
AND	**RY and PG** Respondent

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

Introduction

[1] Mr LJ has applied for a review of the determination by the [Area] Standards Committee to take no further action with regard to his complaints about Messrs RY and PG.

[2] Mr RY was instructed by Mr LJ with regard to issues arising out of breaches of a franchise agreement by companies of which Mr LJ was a director. Mr PG is the barrister instructed by Mr RY when litigation ensued.

Background

[3] DOT Limited (DOT) held a master franchise in New Zealand from MAD Limited (MAD) for [Business D] stores in New Zealand. Mr LJ and interests associated with him owned the shares in [DOT], and for the purposes of this decision I refer to Mr LJ as if he were the owner of the master franchise.

[4] There were 28 subfranchised stores in New Zealand.

[5] During 2017 Mr LJ fell into dispute with [MAD] and failed to meet some of his obligations pursuant to the franchise agreement. One of the defaults was a failure by Mr LJ to pay franchise and marketing fees.

[6] Default notices were issued, and in August 2017 [DOT] was issued with a termination notice. The termination was to take effect as at 1 December 2017.

[7] Mr LJ made contact with Mr RY on 26 September 2017 to assist and advise with regard to the issues in dispute as well as the default and termination notices. A mediation was arranged for November 2017 and Mr RY attended with Mr LJ.

[8] During the course of the mediation, the possibility of a buy out by [DOT] arose. The issue was how much Mr LJ was prepared to pay to do so. Mr LJ offered $2 million but this was not acceptable to [MAD]. The mediation was unsuccessful.

[9] Mr PG was instructed in March 2018 to act for Mr LJ and his companies when [MAD] issued two sets of proceedings, one of which sought an injunction against seven defendants (which included Mr LJ and a company which he had incorporated[1]) from "compet[ing], engag[ing], or in any way [being] involved in a business or activity which involve[d] the selling of retail ice-cream and associated foodstuffs in competition with, detrimental to, or interfering with [MAD's] [Business D] business, in breach of the franchise agreements."[2] I assume the other defendants were companies and individuals who Mr LJ was negotiating with to enter into franchise agreements with [Business E].

[10] Mr PG advises[3] that Mr LJ's opposition to returning to the [Business D] brand was 'unwavering' and that his desired outcome was to continue to develop the new brand.

[11] Mr PG says:[4]

> The best tactic for attempting to achieve this was immediately obvious, even on the first day I was retained. That was to delay matters to the point where individual franchisees (and [Business E]) would be seriously disadvantaged if forced to return to the [Business D]'s fold, and thus to resist the injunction mainly on balance of convenience grounds. By contrast, the loss for [MAD] could possibly be confined and characterised as merely the loss of a revenue stream, which was readily quantifiable and thus compensable. The hope was that [Mr QB] could be convinced that the New Zealand business was for all practical

[1] Business D Ltd
[2] Statement of claim at [1(d)].
[3] Mr PG, letter to Standards Committee (4 October 2018).
[4] At [20]..

> purposes lost to him, and that he would then accept a reasonable sum by way of settlement for that loss.

[12] This tactic was communicated to Mr LJ both by way of correspondence to Mr RY, and directly to Mr LJ.[5] One of Mr PG's emails specifically referred to taking steps which "could further help to delay matters for a bit" and taking steps which "will help buy more time for you to carry on doing what you are doing."

[13] He said:

> The focus ought to be on resisting the injunction by arguing that damages are an adequate remedy and the balance of convenience does not favour an injunction given the changes to the stores have already taken place …

[14] Mr LJ terminated instructions to Mr RY and Mr PG in July 2018.

Fees

[15] During the period of instructions Mr RY rendered invoices totalling $97,705.60 and Mr PG rendered invoices totalling $117,532.50. Mr LJ made payments on account of these costs but when he terminated instructions a balance of $98,311.10 remained outstanding.

[16] Proceedings to recover the outstanding fees have been issued.

Mr LJ's complaints

[17] Mr LJ lodged his complaints with the Lawyers Complaints Service on 20 August 2018. In general terms he described his complaints as being "due to … poor service and wrong advice"[6] resulting in him being placed into a "bad position".

[18] The details of his complaint are:[7]

1. Lack of any or adequate advice about the merits of the court proceedings.

2. Advising [him] to walk away from the mediation when [he was] still willing to conduct negotiations.

3. Not giving [him] any assessment at any time about the costs involved, for example at pivotal times when costs would have been capable of estimation, such as the mediation and the injunction proceedings.

4. Excessive overcharging.[8]

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[5] Both emails on 23 March 2018.
[6] Mr LJ, email to Lawyers Complaints Service (20 August 2018).
[7] Complaint at part 3.
[8] Mr LJ considers that the time recorded was inaccurate.

5. The quality of the job [was] poor. The job seem very rushed out.

6. Many documents were filed after the deadline and did not give [him] enough time to respon[d].

[19] The outcome sought by Mr LJ was "compensation [for] the poor services provided and wrong advice".

The Standards Committee determination

[20] The Standards Committee identified two issues to be addressed:[9]

a. Whether the advice given by either or both Mr RY and Mr PG fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer…

b. Whether the fees charged by either or both Mr RY and Mr PG were fair and reasonable in accordance with RCCC 9.1.

Competence and diligence

[21] The Standards Committee noted that:[10]

> There was a conflict between Mr LJ and Mr RY who acted for Mr LJ in the mediation as to what transpired during it. There was nothing before the Committee to corroborate either view and the Committee could not therefore make any findings on which version was correct.

[22] The Committee observed that the mediation clearly failed because Mr LJ offered $2 million to resolve matters whilst [MAD] required something in the order of $6 million. Mr RY says Mr LJ could have increased his offer but chose not to.

[23] The Committee noted Mr RY's comment that if Mr LJ had increased his offer at the mediation and matters had been settled at that stage, then a significant amount of the fees would not have been incurred.

[24] The Committee determined that "there was nothing before the Committee which supported Mr LJ's complaint that the advice given at the mediation was not competent".[11]

[25] In [23] of its determination the Committee further addressed the issue of competence. It said:

> Mr LJ also stated in his complaint that the provision of the position paper one day ahead of the mediation acted as an impediment to settlement. There was nothing before the Committee to suggest he raised any concern about that at the time.

[9] Standards Committee determination at [12].
[10] At [20].
[11] At [21].

> The lawyers' strategy around that was sound. It did not produce the result desired but was within the parameters of what competent counsel could advise and clearly Mr LJ did not instruct otherwise. Retrospective disagreement over the tactic by Mr LJ does not, and in this case did not, establish that it was not a competent strategy.

[26] The Committee determined to take no further action on these complaints.

Fees

[27] The complaint about fees was raised after proceedings to recover the outstanding balance were issued.

[28] The Committee noted:[12]

> Mr RY stated that Mr LJ was updated regularly about costs as they were incurred, and estimates were provided verbally at multiple stages.

[29] It also noted that Mr LJ had not raised any concerns about the fees rendered and had made payments on account. When Mr RY spoke to him about missed payments, Mr LJ continued to assure him the accounts would be paid.

[30] The Committee said:[13]

> From the documents provided to the Committee it was clear that the work both Mr RY and Mr PG carried out over many hours and months of their instructions was extensive, varied and complex. There was a mediation and two separate sets of proceedings as well as ancillary work done such as for the new Franchise Agreement.
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> The emails supplied gave an indication that the hours were also often long and into the early hours of the mornings.

[31] It noted the work was extensive and the issues raised complex, with some information about Mr LJ's new business only becoming known at a late stage. The Committee also noted that Mr LJ continued to seek advice on related matters from Messrs RY and PG after the court had issued its judgment.

[32] After making these observations (and others not specifically referred to here) "the Committee determined that the fees charged were fair and reasonable".[14]

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[12] At [35].
[13] At [42]–[43].
[14] At [53].

Conflict of interests

[33] At the end of its determination the Committee made a brief note about the alleged conflict of interests between the franchisees. It said:[15]

> … Given that both [DOT] and [Business E] are owned by Mr LJ who had full control over them both, his instructions and the fact none of the franchisees made any complaint, the Committee accepted that there was no merit in the allegation of conflict.

Application for review

[34] In his application for review Mr LJ referred to five issues:

1. The strategies developed by Messrs RY and PG. In his supporting reasons for the review Mr LJ says he does not consider the strategy to be sound. He says that Mr RY 'deliberately' provided his position paper to [MAD] only one day before the mediation and therefore [MAD] did not have sufficient time to consider the issues to be addressed at the mediation. He says that the chances of the mediation succeeding were thereby compromised.

2. He considers the focus of the Standards Committee was wrong in that the Committee focused on "disputes details between [MAD] and [DOT]". He says what he complained about was "the working altitude [sic] of [his] lawyers".

   He provided the following details:

   - always responding to emails very close to deadlines
   - always sending emails after midnight
   - not preparing thoroughly for meetings with Mr LJ.[16]
   - missing deadlines. He says: "Mr PG refused to submit the statement of defence. Because he said we will for sure deny everything from the plaintiff. Therefore, he said to submit the statement of defence is not necessary".

[15] At [54].
[16] Mr LJ refers to an occasion when Mr PG had not read an extensive 'document' prior to meeting with Mr LJ.

- Mr LJ says he wanted to instruct a different barrister but Mr RY maintained that Mr PG "is a good lawyer …".

[35] The outcome of the review sought by Mr LJ is "… compensation because of the poor service or a significant fee discount".

Review

[36] The review proceeded by way of an audio-visual hearing with Mr LJ on 9 June 2020. The audio of that hearing was provided to both lawyers with an invitation to comment if they so desired. Both lawyers advised they had nothing further to add to the material that has been provided to the Standards Committee and this Office.

The hearing

[37] At the hearing, Mr LJ advised that he did not take issue with the strategy pursued by the lawyers. His said his concerns centred around issues involving the 'attitude' of the lawyers. He advised he did not want to pay any more of the fees than he has paid to date. This was somewhat different to the focus of his complaint, which was clearly based on the fact that Mr LJ disagreed with the strategy developed by the lawyers. In the complaint form he specifically says that "the strategy was not sound."

[38] Mr LJ referred to a number of instances where he considered the attitude of the lawyers was poor:[17]

- at one stage Mr PG wanted to see Mr LJ to review a 'one-hundred-page document' produced by Mr LJ. Mr PG did not review the document before the appointment and when Mr LJ arrived at Mr PG's office, Mr PG realised he could not open the document on his computer. It was therefore apparent that Mr PG had not looked at the document before the appointment.

- on numerous occasions Mr PG sent emails to Mr LJ during the early hours of the morning. Mr LJ infers that thereby Mr PG was dealing with matters at the last minute.

[17] I do not intend these examples to be treated as an exhaustive list but they represent the nature of the matters Mr LJ referred to.

- Mr LJ wanted to instruct a different barrister. Mr RY convinced him to continue to instruct Mr PG because Mr RY considered he was a very good lawyer.

- Mr PG did not follow Mr LJ's requests to submit to the Judge at the Court hearing that although the products being sold by [Business E] were similar to those previously supplied by [Business D], there was no infringement of intellectual property.

- Messrs RY and PG advised Mr LJ to proceed as quickly as possible to establish his new outlets and to persuade existing franchisees to surrender their franchises and enter into new franchise agreements with [Business E].

- Mr LJ wanted to settle matters at the mediation – Mr RY followed a different strategy and abruptly terminated their attendance at the conference.

- Mr PG required an extension of time from the court to prepare and file the statement of defence.

Nature and scope of review

[39] The nature and scope of a review has been discussed by the Court. In *Deliu v Hong*,[18] the Court said:

> … the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her.

In *Deliu v Connell*,[19] the Court said:

> …those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than a deference to the view of the Committee.

The Court continued:

> A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

[18] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].
[19] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[40] I observe at this point, that it does appear that Mr LJ is widening the scope of his complaints on review, but I will nevertheless, address the issues raised.

The 'attitude' of the lawyers

[41] As noted above, Mr LJ takes issue with what he terms the 'attitude' of the lawyers. At the review hearing I emphasised to Mr LJ that he had engaged with the complaints and disciplinary process established by the Lawyers and Conveyancers Act 2006 (the Act). That necessarily involved the Standards Committee and myself examining the advice and service provided by Messrs RY and PG and reaching a decision as to whether or not the lawyers' conduct constituted 'unsatisfactory conduct' as that term is defined in the Act. That is a prerequisite to any orders being made against the lawyers.

Unsatisfactory conduct

[42] The term 'unsatisfactory conduct' is defined in s 12 of the Act as:[20]

> (a) conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; or
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> (b) conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct that would be regarded by lawyers of good standing as being unacceptable, including—
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> (i) conduct unbecoming a lawyer or an incorporated law firm; or
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> (ii) unprofessional conduct; or
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> (c) conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm, or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7); or
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> …

Mr RY

[43] Mr RY was instructed at a stage when Mr LJ had defaulted in the performance of various obligations imposed in the franchise agreement with [MAD] and default notices had been issued. A termination notice had also been issued.

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[20] Section 12(d) of the Act is not included as it relates to breaches of restrictions imposed on a lawyer in his or her practising certificate.

[44] By that stage, Mr LJ had incorporated [Business E] Ltd with a view to establishing a franchise operation in New Zealand similar to the [Business D] franchise. He had converted two stores in New Zealand to the new operation and was encouraging the other subfranchise owners to do the same.

[45] In a letter to the Complaints Service,[21] [Law firm B], who Mr RY had instructed, said:

> Throughout (and prior to) Mr RY's engagement, Mr LJ embarked on a strategy to create a set of circumstances that would enable him to buy his way out of the [Business D]'s franchise for a favourable price.

Mr RY considered this was Mr LJ's objective. To support this objective Mr RY identified potential breaches by [MAD] of its obligations under the master franchise which could be used to counter the claims by [MAD]. The objective described by [Law firm B] is at odds with the objectives referred to by [Law firm A] whom Mr LJ had instructed, which portrays Mr LJ's objectives as being to resolve the disputes. However, in an email sent to Mr RY prior to the mediation,[22] Mr LJ acknowledges Mr RY's advice that "it will all end up with money" and refers to the fact that the [MAD] representative at the mediation (Mr SW) would need to refer to the [country] owners of [MAD] to get approval to accept any price offered by Mr LJ.

At the end of a summary of the matters Mr LJ prepared for the mediation he said:

> Over all:
>
> We feel this franchisor does not care of [sic] its franchisees at all
>
> - Asset stripper
> - Closed down 50% stores in Australian [sic] since took over in mid-2014
>
> Taking fees from us but do nothing
>
> As NZ group
>
> We feel very disappointed and hopeless, people want to leave the group, landlord does not want to renew the lease.
>
> We are looking at separation.

This summary in itself gives a clear indication that Mr LJ wanted to exit the franchise, and from the correspondence he was aware that negotiations would centre on what price Mr LJ was prepared to pay to buy out of the [MAD] franchise.

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[21] 6 December 2018.
[22] Mr LJ, email to Mr RY (25 October 2017).

[46] One of the defaults by Mr LJ in his obligations pursuant to the franchise agreement had been his failure to pay various amounts due, pursuant to the agreement with [MAD]. Mr RY advised him to rectify those defaults. He did not. That was a matter that was entirely in Mr LJ's hands.

[47] Mr LJ and Mr JM of [Law firm A] are critical of Mr RY's conduct at the mediation but at the end of the day it seemingly came down to a decision as to how much Mr LJ was prepared to offer to acquire [MAD's] interest as the master franchisor for New Zealand. His offer was not accepted and the mediation concluded.

[48] In litigation before the Courts there will generally be a party who 'succeeds' and one who does not. The same can be said of the mediation in this case. It is an untenable proposition that the lawyer acting for the unsuccessful party should have a finding of 'unsatisfactory conduct' made against him or her by virtue of representing the unsuccessful party.

[49] I do not consider that Mr RY's advice and conduct before, and at, the mediation, constitutes 'unsatisfactory conduct'. The determination by the Standards Committee to take no further action in respect of these complaints, is confirmed.

Mr PG

[50] Mr PG was instructed when litigation was imminent. Mr LJ had established two stores in the mould of the [Business D] stores under the [Business E] banner, and was selling the same products. The process was underway to rebrand other [Business D] stores under the same name.

[51] Mr PG says that the "new sub franchise agreements [Mr LJ] was asking the franchisees to sign with [Business E] had been prepared by [Mr LJ] using the old [Business D] franchise agreements".[23]

[52] [MAD] issued proceedings on 20 March 2018. Mr PG says:[24]

> [Mr LJ] was determined, for his own sake and for the sake of the franchisees, to continue with the rollout of [Business E].
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> Accordingly, his position from the outset, which was unwavering, was that the injunction had to be resisted. He was determined to continue the rollout of [Business E] stores and to fight [MAD] (and Mr QB) the whole way.

[23] Mr PG, letter to Lawyers Complaints Service (4 October 2018) at [12(b)].
[24] At [18]–[19].

He continues:[25]

> The best tactic for attempting to achieve this was immediately obvious, even on the first day I was retained. That was to delay matters to the point where individual franchisees (and [Business E]) would be seriously disadvantaged if forced to return to the [Business D]'s fold, and thus to resist the injunction mainly on balance of convenience grounds.

[53] Mr LJ denies this was his approach. Mr JM says:[26]

> …it was Mr PG who came up with the tactic of defending the matter as hard as possible, delaying the hearing and then hurrying up the conversion so that the balance of convenience would be decided in [LJ]'s favour. Then, when the injunction was successful, LJ would be in a strong position to negotiate a settlement. LJ says that at all times he was simply following the advice and recommended strategy of Mr PG.

[54] Each party saw the matter differently, but clearly, Mr LJ had embarked upon a process of rebranding the New Zealand [Business D] outlets. It was reasonable for Mr PG to form the view that the best outcome for Mr LJ would be to be able to buy his way out of the franchise with [MAD]. He determined that Mr LJ needed 'breathing space' to achieve that and Mr LJ's complaints that Mr PG was always dealing with matters at the last minute may in some cases reflect that approach.

General comments

[55] I do not intend to enter into a detailed critique of the strategies developed by Messrs RY and PG. That is the approach that has been adopted by the Lawyers and Conveyancers Disciplinary Tribunal. By way of example, I refer to the Tribunal's decision in *Auckland Standards Committee No 3 v Castles* where the Tribunal said:[27]

> We wish to make it clear that it is not this Tribunal's role to closely analyse and second guess every move of counsel during each piece of litigation.

[56] This approach is equally relevant when considering the strategy adopted by Messrs RY and PG. Mr LJ must acknowledge that there is no 'right' or 'wrong' approach to the matters in which he had become embroiled. The test for unsatisfactory conduct in the context of these issues is one of 'competence' and 'diligence.' It is impossible to reach the view that the advice provided by either lawyer could be described in those terms.

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[25] At [20].
[26] [Law firm A], letter to Lawyers Complaints Service at [44].
[27] *Auckland Standards Committee No 3 v Castles* [2013] NZLCDT 53 at [177].

[57] Mr LJ's complaints that Mr PG would send emails and be working on his matters 'in the early hours of the morning' cannot be grounds for an adverse finding against Mr PG. If anything, they reflect a diligent approach by Mr PG to his work.

[58] The determination by the Committee to take no further action in respect of these complaints is confirmed.

Fees

[59] Mr LJ complains about 'excessive overcharging' by Messrs RY and PG. He asserts that the time recording by the lawyers was not accurate. However, there is no indication Mr LJ has had the time records of either lawyer, and no details of inaccurate recording has been provided.

[60] In his letter to the Complaints Service, Mr JM expands the complaint about fees into a complaint about a lack of warning or an estimate of what the fees were likely to be.

[61] As noted above, Mr RY's total fees amounted to $97,705.60 and Mr PG's total fees amounted to $117,532.50. The combined total is $215,237.60. Mr RY has issued proceedings to recover the unpaid amount of $98,311.10.

[62] Rule 9.4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) provides:

> A lawyer must upon request provide an estimate of fees and inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded.

[63] Whilst it is regarded as best practice for a lawyer to volunteer information about likely costs, the rule establishes a duty to provide an estimate of costs 'upon request'. There is no indication that Mr LJ requested estimates of fees. It is noted however, that invoices were rendered on a regular basis which would have given Mr LJ a clear indication of the level of cost being incurred. Mr LJ did not protest at any stage about this.

[64] The issue to be determined is whether or not the fees rendered were fair and reasonable. The Standards Committee did not appoint a costs assessor to undertake an assessment of the fees rendered. Given the level of fees rendered, that would have been an appropriate course of action. The process recommended for costs assessors is to conduct a comprehensive examination of the lawyers' files and to discuss issues with the parties in person.

[65] It must be made clear at this point, that the appointment of a costs assessor, is not a reference to costs 'revision' as referred to by Mr JM in his letter.[28] A costs revision under the Law Practitioners Act 1982 enabled the reviser to reduce a lawyer's fee without any adverse disciplinary finding against the lawyer. Under the Lawyers and Conveyancers Act 2006, there must first be a finding of unsatisfactory conduct pursuant to r 9 of the Rules before fees can be adjusted.

[66] In his notes for costs assessors, YP says:

> As previously noted, the costing of legal services is always going to be inexact.
>
> Historically, some Cost Revisers have tended to award modest reductions in the practitioner's fee, principally as a public relations exercise, to appease the complainant. This is inappropriate. If the fee is demonstrably too high, then it should of course be reduced by the Assessor but not in any other circumstances. To do so, amounts to tinkering.
>
> As a broad guideline, if the Assessor determines a fee that is within 20% of what has been charged by the practitioner, it will generally be inappropriate to make a finding that the fee is too high.

[67] A 20% reduction of Mr RY's fees would amount to $19,500, and Mr PG's fees, $23,500.

[68] It is apparent from the invoices that both lawyers rendered accounts based on the time recorded. Mr RY's hourly rate was $580, whilst Mr PG's was $550. Mr RY's charge out rate was disclosed to Mr LJ in the terms of engagement issued by Mr RY at the outset. That would be considered to be at the top end of the scale for a general practitioner, but Mr RY is regarded as an expert in the field of franchising and there is no issue with regard to his hourly rate.

[69] I have not sighted information about Mr PG's hourly rate being provided to Mr LJ at the outset but it was apparent from his first invoice rendered on 3 April 2018.

The potential for an uplift on time

[70] I have commented above that I have given consideration to referring the complaint about fees to a costs assessor. However, I have declined to do so in this instance for the reason that it would have been reasonable in the circumstances for the lawyers to consider applying an uplift to the fee calculated by reference to time.

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[28] At [3(b)].

[71] Rule 9.1 of the Rules sets out 13 factors to be taken into account when rendering fees, one of which is the time expended by a lawyer on a matter. This results in the 'arithmetical calculation' which has been criticised by the courts over the years.[29]

[72] As noted by the LCRO in *Hunstanton v Camborne*,[30] "there are a number of points which can be drawn from that case":

> [a] setting a fair and reasonable fee requires a global approach;
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> [b] what is a reasonable fee may differ between lawyers, but the difference should be narrow in most cases;
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> [c] while time spent must always be taken into account it is not the only factor;
>
> [d] it is not appropriate to (as an invariable rule) multiply the figure representing the expense of recorded time spent on the transaction by another figure to reflect other factors.

[73] In its determination, the Standards Committee made a number of observations about the work carried out by Messrs RY and PG. It said:[31]

> From the documents provided to the Committee it was clear that the work both Mr RY and Mr PG carried out over many hours and months of their instructions was extensive, varied and complex. There was a mediation and two separate sets of proceedings as well as ancillary work done such as for the new Franchise Agreement.

It determined the fees rendered were fair and reasonable for the work carried out.

[74] The skill and specialised knowledge of the lawyers was reflected in their hourly rates. However, the matter on which the lawyers were instructed, was of considerable complexity and importance. It involved an international franchisor and 28 outlets in New Zealand. There was a risk that the businesses of a number of owners in New Zealand would be adversely affected. Mr LJ's business interests were also at stake. Injunction proceedings were issued and these demand close and considerable attention. The Standards Committee noted that "the work on these proceedings accounted for a major part of Mr PG's practice from early April to the hearing on 11 June 2018".[32]

[75] The option to apply an uplift counters the general complaint that the time recorded was inaccurate and the fees excessive.

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[29] See for example *Property and Reversionary Investment Corporation Ltd v Secretary of State for the Environment* [1975] 2 All ER 436 at 441–442 (adopted in *Gallagher v Dobson* [1993] 3 NZLR 611 (HC)).
[30] LCRO 167/2009 at [22].
[31] At [42].
[32] At [50].

[76] For these reasons I confirm the determination of the Standards Committee to take no further action on the complaint about fees.

Decision

[77] I have now addressed the substance of Mr LJ's complaints and the issues raised on review.

[78] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the determination of the Standards Committee to take no further action with regard to Mr LJ's complaints is confirmed.

Anonymised publication

[79] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

DATED this 7TH day of JULY 2020

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O 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 LJ as the Applicant
Messrs RY and PG as the Respondent
Ms ZK as the Representative for Mr RY
[Area] Standards Committee
New Zealand Law Society