LCRO 19/2011

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
BETWEEN	**MR CP** Applicant
AND	**MRS EH** Respondent

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

Introduction

[1] This is an application for review of a determination of Auckland Standards Committee in which Mr CP was censured, ordered to substantially reduce his fees, and pay costs. In addition, the Standards Committee directed that Mr CP's name should be published.

Background

[2] In December 2007 Mrs EH instructed Mr CP through an instructing solicitor to act on her behalf in relationship property and related matters between herself and her husband. She had formed the view that she required strong legal representation and that Mr CP could provide this.

[3] Her wish was for all matters to be dealt with as speedily as possible and declined to participate in relationship counselling. Having made the decision to separate from her husband she wished to carry through with it.

[4] In her letter of complaint[1] Mrs EH described her husband (Mr EH) as a physically and emotionally controlling man. Later, in the same letter, she referred to her husband as a "difficult" man.

[1] Letter of Complaint from Mrs EH to NZLS (23 October 2009).

[5] In his letter of response to the complaint Mr CP notes that the description of Mrs EH's husband was "...an understatement. The level of conflict between this couple was high throughout the duration of my brief".[2] Mrs EH herself, later described her husband as being "...aggressive, manipulating and controlling and...would do everything to destroy any attempt [she] made to be fair".[3]

[6] Various settlement offers were made by each party during the period of Mr CP's instructions and either rejected by Mrs EH on Mr CP's advice, or rejected by Mr EH.

[7] In July 2008, Mr CP issued proceedings on Mrs EH's behalf for interim spousal maintenance and occupation orders which were both declined on 2 September 2008 by [the Judge].

[8] In the meantime, Mrs EH had raised concerns about her ability to meet Mr CP's costs and asked if she could defer payment until matters were settled between herself and her husband. Mr CP agreed to this.

[9] Following receipt of [the Judge's] decision, Mrs EH's immediate response was to advise Mr CP that she wanted to "...get out of it" and "...take what ever he is offering and live the rest of my life in peace even if poor".[4]

[10] In response Mr CP asked her "to pause for a moment"[5] to give him the opportunity to discuss the judgments with his colleague and to allow him to give a considered opinion as to whether the judgments should be appealed. Further in that letter Mr CP wrote:[6]

> 6. I know that you will be concerned about incurring additional costs. If, however, I get to the point of recommending an appeal, I would be prepared to do so for no fee if the appeal failed. If successful, I would charge you half of my usual fee. But in either case, I would need you to agree to cover the filing fee ($400) and the setting down and hearing fee which I believe is something in the order of $1,500. I would need to check. You would also have to accept sole responsibility for any costs award in the event of the appeal failing. The likely parameters are between $1,500 and $2,500.
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> 7. Conversely, if your appeal succeeded, your husband would have an order for costs against him for $1,500 to $2,500, plus you would be entitled to recover from him the Court filing fees and setting down fees.
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> 8. For the moment, I suggest that you take a few days to reflect on your position. If you do not want me to take any further steps, and you are

[2] Letter from Mr CP to NZLS (3 February 2010) at [18].
[3] Letter from Mrs EH to NZLS (11 February 2010) at 3.
[4] Email from Mrs EH to Mr CP (11 September 2008).
[5] Letter from Mr CP to Mrs EH (12 September 2008) at [4].

> content to run with the proposal that is set out in your email (which I note does not include a claim for economic disparity, which I infer you would waive?), then you should confirm that position on the back of this letter.

[11] Mrs EH eventually instructed Mr CP to proceed with an appeal and it was set down for hearing in February 2009. In the meantime, Mr CP applied for a waiver of security and for a priority fixture. He also applied for leave to provide further evidence.

[12] Prior to the hearing and just after he had presented another settlement offer to Mr EH's lawyer, Mr CP rendered an account for the previous five months. In his accompanying letter he explained the way in which he had dealt with the offer made in his letter of 12 September 2008 as to costs:[7]

> 4. I have raised an account for the five months ending 31 January and, in so doing, I have quantified the credit to you in relation to the appeal proceeding by way of deduction from my unbilled time for the period mentioned. This has not been an entirely easy task, because the attendances that I had over the past five months have been spread over all issues relating to your affairs, including the appeal.
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> 5. Your appeal has been set down for half a day. While every case is different, generally, for a half day appeal from the Family Court I could spend anywhere between 15 to 25 hours in all preparation for attendance at the hearing. There is a good deal of preparation required ahead of the hearing, and at least one, possibly two, additional appearances. In your case there was the initial case management conference, which was followed by a short hearing before [the Justice] some time later in relation to your application for leave to adduce further evidence. An application for leave to adduce further evidence is not the norm on appeals from the Family Court. The success of that application resulted in the filing of further affidavits, as recently as last month. Additionally, the appellant's counsel is required to prepare a casebook (which comprises a bundle of all relevant documents from the Lower Court), along with a chronology of key events in submission for the trial. The initial appeal, of course, begins with a detailed application that succinctly lays out the particular points in the judgment that are to be challenged on appeal.
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> 6. There is a possibility that this case will settle in circumstances where the appeal can be withdrawn. That would be a good thing, and hopefully, if maintenance is part of the settlement package, you can take some comfort

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[6] Above n5 at [6].
[7] Letter from Mr CP to Mrs EH (13 February 2009) at [4].

from the fact that the lodging of the appeal has preserved your position by ensuring maintenance is a settlement item.

7. But the dilemma that I face today is what happens if the matter does not proceed to hearing, in the context of proposals contained in my letter to you of 12 September 2008. I have therefore decided to estimate my likely costs on appeal, proceeding on the basis that if your case settles with maintenance included (bearing in mind that up until recently the offer made by [Mr EH] excludes maintenance), then I will charge you only **half** the costs that I would otherwise have incurred on the appeal. Of course if the matter does not settle then, as per my earlier proposal, I will not charge a fee for the appeal if unsuccessful, but half the actual costs should it succeed.

8. In the circumstances, I start with an average of the estimated hours that I might generally spend on an appeal, being 20 hours, and use that as a benchmark ($11,000 plus GST and disbursements) for the appeal. For the purposes of the account enclosed, you will see that I have shown my unbilled time as $36,232, less an allowance to you (grossed up). My fee therefore, for the period 1 September 2008 to 31 January 2009, comes to $30,000 plus GST and disbursements.

   If, however, a settlement is not reached and the appeal goes ahead and fails, I will render an amended account, giving you full credit (by way of deduction) for my estimated costs of $11,000. In those circumstances the fee will be reduced to $24,698 plus GST and disbursements.

9. I trust you will find these arrangements acceptable. If you have any concerns or questions arising, please call me.

[13] The bill dated 31 January which was accompanied by that letter included a credit of $6,232 which was more than one half of the estimated cost of the appeal, but I assume was designed to reduce the fee down to a rounded fee of $30,000.

[14] The appeal turned out to be more complicated than anticipated by Mr CP and instead of a half-day allowance, a full day should have been allowed for. Mr CP therefore allowed a further credit of $5,000 plus GST in his bill of 28 February 2009 so that the total credit allowed approximated one half of $22,000.

[15] The appeal decisions were issued in March 2009 and were largely successful with Mrs EH being granted interim occupation and maintenance orders.

[16] In the meantime, on 4 March 2009, Mrs EH had received $86,835 from her husband being one half of various insurance policies which had been redeemed, following which Mr

CP raised the question of his outstanding invoices with Mrs EH which at that stage stood at $65,115. He also advised Mrs EH that he could not "...afford to continue acting with the ongoing and increasing financial exposure to [his] practice".[8] He also advised that, "I may simply elect to cease acting and trigger my right to claim interest on the sum owing from that point until it is paid in full."[9]

[17] Subsequent communications between Mrs EH and Mr CP did not result in any progress towards resolving Mrs EH's concerns about Mr CP's costs, or Mr CP's concern about the lack of payment. It was in the course of these communications that comments were made by Mr CP which formed part of Mrs EH's complaints.

[18] On 26 May 2009 Mr CP filed an application to withdraw as counsel.

Mrs EH's complaints and the Standards Committee determination

[19] Mrs EH lodged her complaints in October 2009 after Mr CP accused Mrs EH of "disgraceful and dishonest" conduct.[10]

[20] She complained that Mr CP's costs were excessive, that there had been a lack of progress in resolving issues with her husband, and alleged that errors by Mr CP and his methods of dealing with her husband kept the case going for an unacceptable length of time.

[21] In its determination the Standards Committee categorised Mrs EH's complaints as being:-

- excessive charging;
- undertaking unnecessary work;
- delays;
- unprofessional comments and remarks; and
- poor service.

[22] The Committee commissioned a report from a costs assessor (Mr AA) who reached the view that Mr CP's fees were fair and reasonable.

[23] The Standards Committee received and reviewed Mr AA's files. Having done so, the Committee came to a different view from Mr AA. It determined that Mr CP's conduct constituted unsatisfactory conduct and made the following orders that Mr CP:-

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[8] Email from Mr CP to Mrs EH (20 March 2009).
[9] Above n8.
[10] Letter from Mr CP to Mrs EH (5 October 2009).

- be censured;

- reduce his fees from $55,000 to $11,750 plus GST;

- pay a fine of $2,500 in respect of the overcharging complaint and a fine of $10,000 in respect of the unprofessional communications; and

- pay costs of $1,500 in respect of the overcharging complaint and a further $1,000 in respect of the unprofessional communications complaint.

[24] The Committee also directed that the facts of the decision be published and that Mr CP be named.

[25] Mr CP has applied for a review of that determination.

Review

[26] Mr CP provided the following reasons for his review application:[11]

> a) The Committee paid insufficient cognisance and/or gave insufficient weight to correspondence by me to Mr [AA], and to [the Committee], in response to the complaint, specifically my letters of 3 February 2010, 24 May 2010, and 21 October 2010, and, as a result, made erroneous findings, or drew incorrect conclusions.
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> b) The Committee paid insufficient cognisance and/or gave insufficient weight to the report and recommendations of Mr [AA], which report upheld my fees.
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> c) The Committee erred in concluding, among other things, that:
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> i. I failed to provide a breakdown of my total costs as between High Court proceedings and other matters;
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> ii. the cost revisor had taken into account limited material available;
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> iii. in my letter to Mrs [EH] of 12 September 2008, I *stipulated* a fee agreement;
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> iv. I unilaterally *shifted the boundaries* in my letters to Mrs [EH] dated 13 February and 20 March 2009, and *on a number of occasions*;
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> v. the applications lodged in Court were both limited in number and in content;

[11] Application for Review from Mr CP to LCRO (26 January 2011).

vi. the outcomes [on appeal] did not justify the legal fees charged, and that from the outset Mrs [EH] had indicated her desire to resolve matters and settle things;

vii. from the outset Mrs [EH] sought to seek *settlement and resolution*¸ rather than *confrontation* [in relation to matters as between her and her husband];

viii. the outstanding fees should be restricted to the fee agreement stipulated; in this case half of the actual fee in respect of the appeal;

ix. for work other than the appeal the file could not justify a fee over $5,000 plus GST; that bills issued from 1 October 2008 were not fair and reasonable in all the circumstances;

x. the communication from me to Mrs [EH] after my brief terminated (in respect of my outstanding costs) was insulting and unprofessional.

[27] In addition, he submitted that there had been a breach of natural justice in that he should have been provided with the opportunity to make further submissions before the outcome was finally determined.

[28] A review by this Office is not limited to the issues raised on review by the applicant, but it is helpful to have reasons provided to direct the LCRO to the issues which are in contention. I do not intend to specifically address all of the matters raised by Mr CP, but they will be largely dealt with in the course of my decision.

Natural justice

[29] Although a Standards Committee is required to perform its duties, powers and functions in a way that is consistent with the rules of natural justice[12] there is, as noted by the Court of Appeal in *Orlov v New Zealand Law Society*:[13]

> ...a strong legislative imperative that complaints are to be dealt with promptly and accordingly it is appropriate, as noted by Heath J [in the High Court], that the rules of natural justice be tailored to meet that objective.

[30] That objective would not be met if there was a requirement to provide a draft determination prior to it being finalised. The Standards Committee jurisdiction is a summary jurisdiction, and it is not necessary or required for natural justice purposes that a draft determination be issued for comment prior to it being finalised.

[31] A Standards Committee is obliged to ensure that both parties receive and have an opportunity to comment on, any material received in the course of progressing the complaint. In addition, the parties received a Notice of Hearing and were invited to make submissions on the issues raised and the penalty to be imposed. There can be no suggestion that Mr CP had not been advised of the issues to be considered and given an opportunity to comment on material received, and to make submissions to the Committee on the issues raised, as well as the penalty to be imposed in the event of an adverse finding. Consequently, there has been no breach of the requirements of natural justice in this regard.

[32] However, these comments do not apply to a proposal to publish the lawyer's name.

Publication

[33] In the Notice of Hearing dated 16 August 2010 the Standards Committee requested Mr CP to respond to the issues, and also to make submissions on the possibility of publication of his name. Although Mr CP advised that Mr CQ was to make submissions on these "outcomes"[14] (which I understand to mean "penalties") in the event of there being an adverse finding, no submissions were received by the time the Committee resumed its adjourned hearing on 9 November 2010.

[34] The Standards Committee determination was issued on 7 December 2010 and following a finding of unsatisfactory conduct, the Committee made orders and directed that both the facts of the matter and Mr CP's name should be published.

[35] There are several reasons why the direction to publish Mr CP's name must be set aside:-

1. Mr CP was not provided with the opportunity to make discrete submissions on the issue of publication. That is a process which this Office has in previous decisions[15] required to take place to ensure that the requirements of natural justice are met. The policies established in those decisions is reflected in an unpublished decision from this Office dated 1 December 2010, in which the LCRO said:

> As a matter of natural justice it is my view that, when contemplating a publication order, the Standards Committee should inform the practitioner of its finding on the substantive complaint and provide the practitioner an opportunity to make submissions on the matter of publication order. The Notice of Hearing could be modified to indicate that this is the process that

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[12] Lawyers and Conveyancers Act 2006, s 142(i).
[13] *Orlov v New Zealand Law Society & ors* [2013] NZCA 230 at [50].
[14] Letter from Mr CP to NZLS (21 October 2010) at [53].
[15] See for example *HF v SZ* LCRO 186/2009 at [12].

> will be followed. While appreciating that this two-tiered step will delay conclusion of a matter, I am of the view that the potential impact of publication on the lawyer may be considerable (regardless of the fact that it is not a 'penalty') and as such a practitioner should be allowed an opportunity to make submissions which may be pertinent to issues arising in the adverse finding.

That process has not occurred in this instance.

2. There is no evidence in the Standards Committee file that the approval of the Executive Board of the New Zealand Law Society as required by Regulation 30 of the Complaints Service and Standards Committee regulations[16] has been obtained, nor is the determination of the Standards Committee subject to such approval.

3. There is no discussion in the Standards Committee determination of the impact that publication would have on the persons referred to in Regulation 30(2) of the Complaints Service Regulations, and indeed there could be no meaningful discussion in this regard as no submissions were received on the point.

4. Although the Standards Committee refers in [57] of its determination to the various factors that it has taken into account when directing publication of Mr CP's name, there is no record of any discussion as to which of the factors the Committee considered relevant, or the reason why it determined that publication should be directed. Section 158(2) of the Lawyers and Conveyancers Act 2006 requires a Committee to give reasons for any determination and I do not consider that it has done so. Consequently, on review, it is not clear why the Committee considered publication should be directed and Mr CP is unable to make any meaningful submissions concerning the Committee's reasoning in this regard.

[36] For these reasons therefore, I consider that the direction as to publication of Mr CP's name should be reversed.

[37] The question that then falls to be decided is whether I should return the matter of publication to the Standards Committee to reconsider, or make a final decision myself. I have opted to decide the matter myself, not the least because of the significant delays that have been occasioned in completing this review.

[38] My decision on publication will follow the discussion relating to Mr CP's fees below.

The complaint about Mr CP's fees

[39] On 14 April 2010 the Standards Committee commissioned a report on Mr CP's costs from Mr AA who is based in [city]. In response to a query from Mr AA, Mrs EH advised that she was not prepared to make any offer to pay the outstanding fees. Mr CP advised that he was prepared to consider a reasonable offer, although he expected it to be accompanied by a promise of payment.

[40] On 24 May 2010 Mr CP responded in some detail to Mrs EH's complaints and advised that his files were available for inspection. Because Mr AA is based in [city], Mr CP practices in [North Island city], and Mrs EH was in [South Island city], it was not possible for the parties to meet in person. Mr AA did not convene a telephone meeting and nor did he request Mr CP's files. He did, however, seek and review Mr CP's time records.

[41] On 31 May 2010 Mr AA issued a draft report to the parties in which he concluded that he did not consider Mr CP's fees were excessive. Before issuing the report in final form he sought comments from the parties on the draft. Mrs EH responded on the same day and advised that she was not in a position to reply fully to the draft report as she was overseas at the time. She advised that she would not have access to a computer until 9 June 2010. Mr AA acknowledged that email and recorded that he would await Mrs EH's additional comments.

[42] Mr CP advised Mr AA that he was happy with the draft report. It would appear that he considered the report to be the final outcome of the complaint and wrote to Mrs EH on 2 June 2010 demanding payment of his fees. This letter in itself contained some surprising and threatening statements to Mrs EH, which are similar to the earlier emails to her by Mr CP and about which she had complained. It was wrong for Mr CP to be writing to Mrs EH at this time as the Standards Committee had not considered Mr AA's report and delivered its determination at that stage. That error would have become apparent when the Standards Committee issued its determination.

[43] Mrs EH wrote to Mr AA on 9 June 2010 expressing some surprise that Mr CP had treated the draft report as a final report and that he had written in the manner in which he had. She made some minimal comment, and I am not sure whether she intended these to be her last – she was understandably confused by the correspondence.

[44] However, Mr AA issued his final report on 10 June 2010.

[45] Following receipt of the report, Mrs EH provided detailed responses in her letter of 27 June 2010.

[16] Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.

[46] In considering the issue of fees, the Standards Committee made the following comments:[17]

> 18. The Committee considered all of the material before it on the 9 November 2010. The Committee noted that the cost assessor had indicated that the fee was fair and reasonable. However, the Committee were mindful that Mr [CP] had agreed to accept half fees in respect of the appeal. Essentially a fee agreement was put in place by Mr [CP] ... The Committee noted the various comments made at the various Court hearings. For example the decision from [Judge X] in the High Court February 2009 includes the following statement “no substantive proceedings before any Court regarding relationship property”. The Committee noted that this was relevant as the Judge was asked to consider an occupation order and maintenance order. When [the Judge] made a decision in the Family Court in September 2009 she also noted that there was no substantial relationship property matters before the Family Court only an application for pre trial discovery. The Committee noted that there were no proceedings on foot and only a pre proceeding discovery application was alluded to.
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> ...
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> 21. The Committee noted that they had requested additional information from Mr [CP] for the hearing on the papers, specifically that Mr [CP] clarify his billing regarding those matters relating to the appeal as distinct from work done for the relationship property matters. The Committee did not receive any additional information from Mr [CP] and therefore must now consider this issue without additional input from Mr [CP], as the Committee could see no reason to delay hearing this matter any further.
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> ...
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> 23. The Committee noted that the costs assessors report came before them in July 2010 and that report upheld the fees issued by Mr [CP] in the sum of $53,447.08. The costs reviser had taken into account limited material available and did indicate that in this instance the hourly rate formed the basis of the invoices and the report was based on an assessment of whether the time spent on the job was appropriate. The cost assessor sought the time records so that these could be considered in context of the judgments on the file, the appeal judgment and other attendances. The costs assessor’s report dated 16 June 2010 makes references made to legal services provided for relationship property and maintenance issues.

[17] Standards Committee Determination (7 December 2010).

24. ...The report from the costs assessor seemed to confirm that the assessor worked from the invoices, judgements on file, the appeal judgment and related documents (e.g. the time records) in the matter rather than the actual files held by the practitioner. The cost assessor did obtain extracts and copies from the practitioner and also clarification from him on several issues...

25. The Committee noted that the report the costs assessor prepared was based on some documents only, such as the invoices, judgments on the file, the appeal judgment, related documents (e.g. the time records) and other extracts or copies produced form the complaints file. The Cost Assessor does not appear to have had the benefit of the entire client file although the Costs Assessor obtained copies of documents from the file, produced by Mr [CP] who also provided clarification on issues of concern to the Cost Assessor.

...

28. ...Also relevant was Mr [CP]'s failure to provide a breakdown of the bill of costs clarifying what part of the fee related to the appeal and what part of the fee related to the relationship property and maintenance issues. The Committee's concern was that the fees charged between 31 August 2008 and 31 March 2009 approximated $55,000 and when the Committee had asked Mr [CP] for a breakdown of those bills of costs showing what part related to the appeal and what part related to the relationship property and related matters they did not receive any information in this regard.

29. The client file was delivered to the Complaints Service and the Committee were able to consider all relevant documents. In particular the Committee noted that in a letter dated 12 September 2008 from Mr [CP] to [Mrs EH], Mr [CP] acknowledges that the client wished to settle things and move on. At paras 4 and 6 of that same letter he confirms that he knows the client will be concerned about incurring additional costs. Mr [CP] then stipulates the following agreement:

> "if, however I get to the point of recommending an appeal, I would be prepared to do so for no fee if the appeal fails. If successful I will charge you half of my usual fees. But in either case, I would need you to agree to cover the filing fee ($400), and the setting down and hearing fee which I believe is something in the order of $1500".

30. The Committee noted that Mr [CP] then shifted the boundaries unilaterally in his letter dated 13 February 2009. Mr [CP] follows this up with an email dated 20 March 2009:

> "I note your position has of course changed now by the recent partial settlement of around $86,000. This development in and of itself is reason enough for me to review the position".

...

32. It is of concern to the Committee that the lawyer indicates that the amount owing as at 1 March 2009 is the sum total of $41,897.86. The Committee note that Mr [CP] lodged applications but these were limited both in number and in content. The Committee were also concerned that the outcome did not justify the legal fees charged and that from the outset the client had indicated to Mr [CP] her desire to resolve matters and settle things. The Committee accepted that the client's uncertainty was more than likely due to her position of vulnerability and was to be expected, unlike say a commercial client. The other issue of concern to the Committee was that this particular client was a mature person facing an adverse change of circumstance and suffering from ill health.

33. The Committee considered whether, in addition to the appeal matters, there were any substantial relationship property proceedings on foot. The Committee could assess from the client files that there was an on notice application; followed by an application regarding interim distribution comprising of 1 page; followed by a narrative affidavit of 3 pages and then an amended application for discloser and inspection of documents. There was no affidavit of assets and liabilities based upon the information sheet on the client file. ...The Committee also noted that Mr [AA] had not made reference to the fee agreement. The Committee further noted that that fee agreement was then unilaterally changed on a number of occasions by Mr [CP].

...

37. Although the Committee was aware that Mr [CP] was of the view that 'time and labour expended' and 'skill and specialist knowledge' allowed Mr [CP] to charge what he charged the Committee was also mindful that the documentation on the client file was limited to 4 applications brief in content (no more than a few pages each) and that the appeal matter although successful achieved a result which, in financial terms, was disproportionate to the amount of the legal costs incurred. The Committee was also mindful that from the beginning the complainant had sought to seek a settlement and

> resolution rather than confrontation. The Committee also noted than any free agreement is included in the list of reasonable fee factors (Chapter 9 of the rules). In this case a fee agreement did exist.

[47] Following consideration of these issues the Committee concluded that Mr CP's fees were not fair and reasonable and that Mr CP's conduct with regard to billing constituted unsatisfactory conduct by reason of a breach of Rule 9 of the Conduct and Client Care Rules.[18] Based on the Committee's review of the file, it concluded that there could be no justification for any fee in excess of $5,000 for all of the work other than the appeal.

[48] With regard to the appeal the Committee had this to say:[19]

> Ultimately the Committee were of the view that any fee should be restricted to the fee agreement stipulated. In this case this was to be half of Mr [CP]'s actual fee. His estimate for a half day appeal was $11,000. In the absence of better information from Mr [CP] as to the actual time spent on the appeal, and bearing in mind the value of the appeal to the client, this estimate was adopted by the Committee. The appeal took the afternoon as well, and the Committee has allowed a further $2,500 for that extra time. This made a total of $13,500 for the full costs of the appeal. One half to that is $6,750 which the Committee has determined is the proper fee allowable for the appeal. To be added to that is GST and the full amount of the disbursements.

The first review hearing

[49] Ms Bouchier convened an applicant only review hearing on 22 November 2012. Mrs EH attended by telephone. Mr CQ had provided submissions dated 15 November 2012, but these had not found their way on to the file and consequently Ms Bouchier was unaware of them until the hearing. In addition, she expressed some disquiet with Mr AA's report particularly with regard to the fact that he had not met or convened a meeting with the parties, nor had he reviewed Mr CP's files. In addition Mr AA did not refer to the fee agreement.

[50] Ms Bouchier therefore advised the parties that she had determined to commission a further report by a costs assessor, who was to have access to Mr CP's files. The hearing was adjourned and Mr ZZ was commissioned to provide the second report.

[18] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[19] Above n17 at [38].

[51] Mr ZZ reviewed Mr CP's files and convened a telephone conference with the parties. He subsequently confirmed by letter dated 31 January 2013 the documents that he would consider when carrying out his investigation and report.

[52] Following the hearing with Ms Bouchier, this review was assigned to me. I confirm that I have listened to the audio of the first hearing and reviewed all of the material on the file.

The relevant bills of costs

[53] In the letter of 31 January 2013 Mr ZZ confirmed that he would be considering all 12 invoices issued by Mr CP throughout the period of instructions from 21 December 2007 to 22 May 2009. Six accounts were rendered prior to 1 August 2008 which is the date on which the Lawyers and Conveyancer's Act 2006 came into force. Different principles apply in respect of complaints about conduct prior to that date. With regard to complaints about fees prior to that date, the transitional provisions of the Act require that any billing would need to be grossly excessive or dishonest[20] before any complaint could be considered by the Committee.

[54] Mr ZZ addressed the bills issued prior to 1 August 2008 separately from those rendered after that date and found that there was no jurisdiction to consider those bills of costs, as there was no gross or dishonest overcharging evident. Subsequently, he considered whether to address the bills of costs rendered after that date on a bill by bill basis.[21] However, he noted that "...Mr CP's engagement was a continuing and evolving one and his bills were not rendered on the completion of his instructions or on completion of any particular part of his instructions".[22] His approach therefore was to consider the totality of the bills in relation to the work carried out.

[55] This was the correct approach but there is no logic in separating out the bills of costs prior to 1 August 2008. At all times during his instructions, whether before or after that date, Mr CP was required to step back and consider all of the work carried out, and determine what is a fair and reasonable fee for the work done with due reference to the relevant fee factors. That process must necessarily include the bills of costs rendered prior to 1 August 2008. If, in adopting this process, Mr CP decided that his overall bill should be reduced, then he would have needed to address that in the bill(s) under consideration, and reduce them accordingly. Consequently, the provisions of the Act apply to Mr CP's billing over the whole period of time.

[20] See for example *J v A* LCRO 31/2009.
[21] Mr ZZ's Report (26 April 2013) at [48].
[22] Above n21 at [49].

The fee agreement

[56] The Standards Committee considered that Mr CP had stipulated a fee agreement and then "shifted the boundaries unilaterally in his letter dated 13 February 2009".[23] It then determined that "...any fee should be restricted to the fee agreement stipulated".[24]

[57] The Committee noted that the fee agreement was that the fee charged by Mr CP was to be half his actual fee, which he initially estimated to be $11,000 on the basis that the appeal would take half a day. The Committee noted however that the appeal took a full day and allowed a further $2,500 for that. The total allowed by the Committee for the appeal therefore was $13,500 of which one half was to be charged, making a fee of $6,750 plus GST. It is somewhat difficult to understand why an estimate of half a day of $11,000 should not be doubled for a full day, and no reasons have been provided by the Committee for adopting this approach.

[58] In contrast, Mr CP applied a credit based on an estimate of $22,000 for a full day hearing. He allowed $6,232 as a credit against his bill rendered on 31 January 2009, and a further credit of $5,000 against his bill rendered on 28 February 2009.

[59] Mr ZZ discussed the fee agreement at length and properly adopted the position that the "...fee agreement be binding, it ought to be given primacy as far as the discrete costs in relation to the appeal are concerned".[25] He considered that the intended discount was appropriate given that the legal issues were straightforward. However Mr ZZ has identified that the figures included an overcharge in Mr CP's bill dated 31 January 2009 of $2,657 in excess of the time recorded, and as Mr CP has based his bills on the time recorded he considers that this should not be charged.

[60] With regard to all of the work carried out by Mr CP, Mr ZZ was satisfied that the "...work claimed to be done actually was done...".[26] He also observed that:[27]

> ...in general the work needed to be done despite the fact that with the benefit of hindsight, some of the affidavit evidence and some of the correspondence was not strictly speaking, necessary.

[61] In conclusion, I consider that Mr CP has applied the fee agreement which he proposed to the accounts rendered. As noted by the Committee, the agreement was that Mr CP would charge one half of his actual fee. His actual fee was as recorded in his time

[23] Above n17 at [30].
[24] Above n17 at [38].
[25] Above n21 at [75].
[26] Above n21 at [78].
[27] Above n21 at [79].

records and he allowed a credit of just over half the amount which he estimated related to the appeal.

The work undertaken by Mr CP

[62] Mrs EH alleges that Mr CP carried out a lot of unnecessary work and made errors. The Standards Committee itself referred to minimal work being carried out by Mr CP.[28]

[63] After closely examining Mr CP's file, Mr ZZ made these comments:[29]

> 51. Having considered the volume of letters, applications, affidavits, memoranda and other documents that were generated, filed and exchanged by both practitioners involved in this matter, it is clear with the benefit of hindsight that the high level of conflict between the parties may have led to a comparatively high level of activity by both barristers. For example, it appears that there were times during the proceedings when letters were exchanged that strictly speaking were "unnecessary" in the sense that they did not much advance matters towards resolution. However, virtually every significant letter that was sent to Ms [AB] was subject to approval from Mrs [EH] and she was kept informed of the documents that were being filed and the reason for those documents. That does not absolve the practitioner from overall responsibility for ensuring that the steps that are taken are reasonable and necessary. Not many clients are in a position to determine for themselves what should and should not be done and Mrs [EH] was a vulnerable and distressed client facing a difficult set of circumstances.
>
> 52 I note that in relation to the High Court appeal there were a total of seven affidavits prepared and filed on Mrs [EH's] behalf which dealt with three principal issues; an application for a priority fixture; a request for waiver of security for costs and; an application for leave to adduce new evidence on appeal.
>
> 53 It is relatively unusual for any affidavit evidence to be received on an appeal although this is more common where there is an appeal on maintenance issues because some *"updating evidence"* is often received prior to hearing. It is very unusual for as many as seven affidavits to be filed in a High Court appeal. However the application for waiver of security for costs was successful. The application for a priority fixture was unsuccessful principally because hearing time was not available. The appeal itself was successful which was an excellent result because it was essentially an appeal from the exercise of a discretion by a Family Court Judge. I also note that the High

[28] Above n17 at [37].
[29] Above n21 at [51].

Court Judge discussed the evidence that was filed but was not directly critical of the volume of it so I cannot conclude that any particular step taken in relation to that proceeding by the practitioner was unreasonable or unnecessary at the time it was taken - at least in as far as the preparation and filing of documents in the High Court was concerned.

54 I have noted in the schedule of accounts issued some occasions where Mr [CP] either of his own initiative or when prompted by Mrs [EH], corrected correspondence or affidavits. One example was an occasion when he had incorrectly described the type of diabetes that Mrs [EH] was suffering from. None of the "errors" or "corrections" appear to have resulted in significant additional cost being incurred. None of them were obviously of a nature that would have caused any irreparable harm to progress of either the proceedings or of settlement discussions. There is certainly no evidence that they had any adverse impact on the outcome of the two defended applications that were argued in Court. Generally the documents and correspondence were as well drafted and appropriate as would be expected from a practitioner of Mr [CP]'s seniority and experience.

55 It is understandable that Mrs [EH] may have been concerned at the time because of the very confrontational approach that her husband was taking and the risk that he might try to gleefully exploit evidential inaccuracies. I have seen no evidence that her understandable concerns were realised or that there was a significant risk of them being realised and despite the concerns I express above about the volume of correspondence and affidavit evidence, I do not think that the need for "corrections" is a significant factor in the fees that were charged.

56 There were a significant number of "interim" and "substantive" settlement offers exchanged between the barristers involved. There were also a number of occasions where Mrs [EH] was presented with either ultimatum or offers directly by her husband which she discussed with Mr [CP]. On occasions it does seem that she was at least initially inclined to accept some of the offers or explore them further. It is correct that on occasions Mr [CP] advised her that either more information was required before a settlement offer could be properly considered or that the settlement offer did not appear to be one that should reasonably be considered.

57 Again with the benefit of hindsight a maintenance and relationship property application that had maintenance of $1,500.00 per month at stake and relationship property application with property worth somewhere between $985,000.00 and $1.2 million at stake could justifiably have been resolved on a pragmatic basis at an earlier stage if the parties had insisted on settling

without a complete understanding of the exact value of the property available for division.

58 However, Mrs [EH] had good reason not to trust her former husband and not to trust the information that was provided to her by him. There were a number of documents and a range of information that was not available to her and Mr [CP] and was not being made freely available. Mr [CP]'s advice in relation to each settlement proposal seems to have been appropriate and balanced. Mr [CP] had an ethical obligation and a statutory obligation to explain to his client the effects and implications of the agreement which involves a comparison of her rights under the Act with her rights under any settlement. That generally requires a fairly accurate understanding and extent of relationship property.

59 There were times when the correspondence between Mr [CP] and Ms [AB] may have been somewhat unnecessarily focused on conflicts that they were having between each other over the way they were running their clients' case and some of that correspondence may have been "unnecessary" but in a "hard fought" case where Mrs [EH] was understandably feeling somewhat bullied and intimidated by her husband, the perceived need to "take a stand" on some matters on her behalf is understandable. In the end, I am not of the view that either the undertaking of unnecessary work, errors made by the practitioner or the rejection of settlement offers have in and of themselves resulted in the fees charged being unfair and unreasonable. Mrs [EH's] concerns are understandable and some of the issues she raises may have contributed to the significant bills that were incurred.

[64] He concludes:[30]

103. If I apply the four guidelines discussed in *CL v XG*[31] above then:

(a) I am satisfied that the work claimed to be done was done.

(b) I am satisfied that the majority of the work that was done needed to be done but there were arguably times when documents were drafted or correspondence exchanged that at least with the benefit of hindsight was not necessary. I am not satisfied that the work was done at the right level. It is my opinion that at least the majority of the work on this file could competently, effectively and efficiently have been done by a practitioner with between five and 10 years experience.

[30] Above n21 at [103].
[31] *CL v XG* LCRO 99/2010.

(c) I am therefore not satisfied that a fair hourly rate was applied given what was involved here.

(d) Having looked at the time recording, the files as a whole and having carefully considered matters, I am led to the conclusion that the fee for work billed after 1 August 2008 is not fair and reasonable in all of the circumstances.

Mr CP's hourly rate

[65] Mr ZZ's conclusions are that "...a bill of almost $50,000 plus GST and disbursements for the work other than the appeal after 1 August 2008 is on the high side of "fair and reasonable"".[32]

[66] The reason identified by Mr ZZ for the excessive costs is that the work could have been done by someone of a much lesser seniority than Mr CP at a much lower hourly rate than Mr CP's rate of $550.

[67] A lawyer establishes his or her hourly rate based on a number of factors, one of which is "the experience, reputation and ability of the lawyer".[33] A lawyer with less experience, reputation and ability, will of course charge a lower rate than one with greater experience, reputation and ability. Calculation of the fee based on the time expended multiplied by the hourly rate is a common method of establishing a base fee to be charged by the lawyer. Thereafter, the lawyer must consider the reasonableness of the fee overall and then adjust the total bill after a consideration of the fee factors set out in Rule 9.1 of the Conduct and Client Care Rules. Mr CP referred to this adjustment exercise in his Terms of Engagement.

[68] I have some difficulty with Mr ZZ's reasoning. Mr CP is a barrister sole. He does not have the ability to get the work carried out by others. He advised Mrs EH of his hourly rate at paragraph 11 of his Terms of Engagement and this was accepted by her when she signed the acceptance on 29 January 2008.

[69] Mrs EH had identified Mr CP as being a barrister whom she thought would carry sufficient seniority to counter what she knew would be her husband's response to her decision to leave. She needed "strong legal help to manage him."[34]

[70] Mr CP rendered 12 invoices. Each invoice was rendered on the basis of time multiplied by Mr CP's hourly rate. Mrs EH says that she paid $36,952.79 towards these costs but in August 2009 she advised that she was unable to pay anything further.

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[32] Above n21 at [102].
[33] Above n18, Rule 9.1(g).

[71] Mr CP agreed to accept payment of his costs when settlement was reached between Mrs EH and her husband but advised that he would continue to render accounts so that Mrs EH was aware of costs as they were incurred.

[72] Significant costs were incurred when Mrs EH instructed Mr CP to proceed with an appeal of the Family Court judgment. Understandably, Mrs EH relied on Mr CP's advice as to whether or not to proceed. The appeal was in the main successful, with interim occupation and maintenance orders being made, although it would seem that Mr EH did not adhere to these completely.

[73] Ultimately it may be that the results of the appeal encouraged Mr EH to settle matters. Mrs EH however considers that the final settlement was "appalling".[35]

[74] The difficulty I have with Mr ZZ's reasoning is that Mrs EH instructed Mr CP with full knowledge of his hourly rate which she specifically accepted in the Terms of Engagement. Bills were rendered on this basis and she continued to instruct him. It would be unconscionable if, having accepted Mr CP's hourly rate when she signed the Terms of Engagement, Mrs EH's complaint then resulted in an alteration to that because the work could be done at a lower rate by a lawyer with less experience. Mrs EH instructed Mr CP for reasons in addition to his ability to do the work – she chose him because she considered that she needed strong legal representation to counter what she knew would be her husband's antagonistic response to her claims, and continued to instruct him to counter the seniority and experience of the counsel engaged by her husband.

[75] This situation can be distinguished from that which existed in *Auckland Standards Committee 1 v Hart.*[36] In that case Mr Hart had not advised his client of his charge out rate of $1,000 per hour. Quoting the evidence of the expert witness (Mr Billington) the Tribunal had this to say:[37]

> The distinguishing feature of this case is that although the client chose Mr Hart as counsel the client was not informed in advance as to what the fees would be. As Mr Hart did not so inform the client he is driven to justify his fee at an hourly rate of $1,000. When one analyses what was done by Mr Hart in this case it is difficult to see how he could justify the fees charged to the client.

In addition, application of that hourly rate to waiting time, appearances by others and the question as to whether or not the work was actually carried out at all, were all issues addressed by the Tribunal in that case.

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[34] Letter from Mrs EH to NZLS (23 October 2009).
[35] Above n34.
[36] *Auckland Standards Committee v Hart* [2012] NZLCD 20.
[37] Above n36 at [107].

[76] None of these factors apply here. Mr ZZ has carefully reviewed the files and work carried out. He has found that all the work that has been charged for was done and that all the work done was necessary in the circumstances of this case.

[77] Having reached this position, there seems to me to be no grounds that can be advanced for adjusting Mr CP's fees. There is the matter of the overcharge on time referred to by Mr ZZ in paragraph 65 of his report, but the amount involved as related to the whole fee, is not such that I would feel justified in making a finding of unsatisfactory conduct. Mr CP may care to address this issue and adjust his account voluntarily, but there will be no finding in respect of which such an adjustment can be ordered.

[78] The situation in which Mrs EH has found herself is one that arises frequently with regard to lawyer's bills, particularly in relation to litigation. The amount of time which a lawyer is obliged to expend on a client's matter is often driven by factors beyond the lawyer's control. In this case, it was largely the conduct of Mr EH which necessitated a significant amount of additional attendances as well as an unfavourable judgment. Mr CP had no control over these matters.

[79] He did have control over some aspects, such as the delay in first communicating with Mr EH and it is understandable that Mrs EH was unhappy with that. There also seems to be some dissatisfaction with Mr CP's performance on the part of Mrs EH's children. However, she subsequently requested Mr CP to proceed with the appeal and apologised for her son's conduct as well as requesting Mr CP not to include her daughter in communications.

[80] Mrs EH was Mr CP's client and she made the decision to continue with his services. Mr ZZ found no reason to criticise Mr CP's work and Mr AA considered that Mr CP's bills of costs were fair and reasonable. Contrary to these two views is the view of the Committee which includes experienced practitioners. However, the Committee's determination does not give any in-depth analysis of why it considered that the value of all of the work other than the appeal was no more than $5,000. Without this, I have nothing on which I can base an opinion contrary to those of the costs assessors who have carried out a close examination of the work which Mr CP undertook.

[81] Contrary to the view of the Standards Committee I consider that Mr CP did honour the fee agreement which he had proposed – he gave Mrs EH a total credit of $11,232 against the fees recorded.

[82] For the reasons set out above, I intend to reverse the decision of the Standards Committee as to costs.

Publication

[83] In [36], I noted that the determination of the Standards Committee to order publication of Mr CP's name could not stand for the reasons noted. I also indicated that I would determine the question of publication myself, rather than returning the matter to the Standards Committee to reconsider.

[84] As a result of the reversal of the determination with regard to fees, I do not consider that publication of Mr CP's name is required in the public interest. In addition, given the outcome of this review, publication of the remainder of the Standards Committee determination is no longer appropriate.

Conduct – unprofessional comments and remarks

[85] Mrs EH also complained about inappropriate remarks made by Mr CP in a number of emails to her. These are referred to in [42] to [46] of the Committee's determination.

[86] In the email dated 19 March 2009 to Mrs EH, Mr CP referred to his personal financial position:

> Currently there is $65,115 outstanding on your matter which has been steadily accumulating since 1 July 2008. It is a very significant sum for a sole practitioner to have outstanding and unsecured, and it is the first time in my career at the bar that I have been in this position. I am not geared up to extend credit to clients for lengthy periods. But, moreover, my Bank simply wouldn't allow me the facility necessary to do so. Even so, I have an overdraft out of necessity, which I can tell you is very sorely strained at this time and my Bank is keen (like all commercial Bankers at present) to see me reduce my debtors.

[87] The Committee considered that these comments were not appropriate when seeking payment for the provision of regulated services. The Committee noted that in an email the following day Mr CP "...insinuated that he would withdraw his services and the Committee considered that email to be somewhat menacing in nature – setting an ominous tone for things to come".[38]

[88] In an email on 19 May 2009 Mr CP stated:

> You have had plenty of time to tell me what your "issues" are. I deserve better, and this ongoing issue needs to be brought to a head. Plainly you do not value my time – past and present much less give a damn about the financial pressure you are causing me.

[38] Above n17 at [42].

The Committee considered these comments amounted to insulting and unprofessional language.

[89] Finally, the Committee had regard to Mr CP's comments in an email of 5 October 2009 where he stated:

> It is inconceivable to me that you could get competent advice on my work/your affairs without my file. Your conduct has been disgraceful and dishonest.

The Committee considered this communication was "unprofessional".[39]

[90] Communications of this nature continued in 2010, when again Mr CP advised Mrs EH that he would "have no qualms now in suing you now for every last cent plus costs, if I must do so".[40]

[91] Mr CP's communications with Mrs EH were unprofessional. Regardless of the circumstances giving rise to the situation, he needed to retain objectivity and professionalism. It was completely inappropriate to address such comments to Mrs EH.

[92] At [45] of its determination the Committee also expressed concerns about what happened when the retainer was terminated. It noted that Mr CP took the deliberate step of copying Mrs EH into emails he sent to two other practitioners which contained inappropriate comments about those practitioners.

[93] The overall tenor of Mr CP's communications is personal, petulant and almost vindictive. They are not communications that should be made by any lawyer to a client and it is somewhat surprising that they have been made by a lawyer of Mr CP's seniority.

[94] The Committee considered that "...these communications constituted unsatisfactory conduct of a serious kind".[41] It also made the comment that the communications had been made at a time "...when the lawyer had wrongfully reneged on his fee agreement" and "when he had overcharged for other work".[42]

[95] As I have decided that neither of these conclusions are correct, they should not be taken into account when considering what Orders should be made following the finding of unsatisfactory conduct.

[96] However, the observations by the Committee that the communications were made at a time when Mrs EH was "...particularly vulnerable and in respect of a case involving her

[39] Above n17 at [44].
[40] Letter from Mr CP to Mrs EH (2 June 2010).
[41] Above n17 at [47].
[42] Above n41.

emotional life; were calculated to wound; and were over a sustained period of time"[43] are all relevant.

[97] Mr CQ submits that the comments made by Mr CP in the various communications "...do not meet the threshold of seriousness to warrant a finding of unsatisfactory conduct"[44] although he confirms that Mr CP acknowledges that some of the comments were "ill advised and inappropriate".[45] He refers to the circumstances in which the comments were made and submits that they need to be looked at in that context. He says that:[46]

> Mr [CP] was in an unenviable situatuion. Mrs [EH] was refusing to discuss the level of fees she was incurring, yet she was happy to continue to instruct Mr [CP] and therefore, to keep increasing her indebtedness. Mr [CP], on the other hand, as a sole practitioner, was forced to continue to carry a large debt and was unable to obtain security for it or to ascertain Mrs [EH's] plans in relation to future payment.

[98] Mr CQ submits that references by Mr CP to his own financial situation was neither personal nor inappropriate – rather:[47]

> It just conveyed Mr [CP]'s concerns regarding the increasing level of debt owed to him and being incurred by Mrs [EH] in light of the reality of the situation the parties faced. It was also part of Mr [CP]'s justification for suggesting that interest be charged on the outstanding amount, as was open to him through the engagement arrangement that [Mrs EH] signed.

[99] Rule 3.1 of the Conduct and Client Care Rules provides:[48]

> A lawyer must at all times treat a client with respect and courtesy and must not act in a discriminatory manner in contravention of section 21 of the Human Rights Act 1993.

[100] In a similar vein, Rule 10 provides, "[a] lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings".[49]

[101] It is accepted that Mr CP was concerned about the payment of his fees and entitled to take steps to limit his increasing exposure without securing payment. However I do not share Mr CQ's view that the comments were justified because of the context in which they

[43] Above n41.
[44] Submissions from Mr CQ (15 November 2012) at [61].
[45] Above n44 at[60].
[46] Above n44 at [49].
[47] Above n44 at [53].
[48] Above n18.
[49] Above n18.

were made. There is no excuse for the statements made by Mr CP, which the Standards Committee described as “personal” in nature, and which I have described as “petulant” and “almost vindictive”. They could also be described as “badgering”. Mr CP would have been well advised to remove himself from the recovery action and act professionally to limit further exposure by withdrawing as counsel, as indeed he did. There can be no criticism of him for that.

[102] With regard to this aspect of Mrs EH’s complaint I confirm the finding of unsatisfactory conduct. The question arises as to what penalty is appropriate. Mr CP has apologised to Mrs EH through Mr CQ, and personally at the review hearing. However, it is appropriate that a further penalty to mark out that this conduct has been unacceptable should be imposed. The censure imposed by the Committee is an important part of that.

[103] In addition, I consider that in principle, a fine also remains appropriate. The Committee imposed a fine of $10,000 in respect of these communications. This represents 75% of the maximum fine that could be imposed by the Committee and reflects what the Committee saw as the serious nature of the conduct. However, it linked this conduct with the overcharging complaints and findings, which I have previously commented that I do not think that these were relevant factors to take into account when considering penalty in this regard.

[104] However, I do not wish to remove altogether the seriousness with which the Committee viewed this conduct and in the circumstances. I consider that a fine of $7,500 reflects the seriousness of the conduct but takes into account the fact that the overcharging aspects when determining penalty were not relevant.

Delays

[105] Throughout the investigation by the Committee and this review, Mr CP has been tardy in his responses. Although he did not disengage from the process and has always sought extensions for his responses there is an overriding pattern of a failure to meet requested deadlines and significant delays in responding at various times. This has been a major factor in contributing to the extended period of time that it has taken to complete the investigation in this review. Mrs EH observed similar delays in attendance to her matters, not the least of which was the delay in first communicating with her husband at the time which was critical to her, having taken the most significant step of leaving her husband.

[106] Not dealing with a client’s affairs in a timely manner contributes to a sense of dissatisfaction by the client, and that has been the case in this instance. These comments are intended as observations only and I note and confirm the Committee’s decision to take no further action with regard to the issue of delay.

Decision

1. Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the finding of unsatisfactory conduct with regard to overcharging is reversed.

2. Pursuant to s 211(1)(a), the finding of unsatisfactory conduct with regard to unprofessional communications is confirmed.

3. Pursuant to s 211(1)(a) the Order under s 156(1)(e) that Mr CP reduce his fees is reversed.

4. The censure pursuant to s 156(1)(b) with regard to overcharging is reversed, but remains with regard to unprofessional conduct.

5. The fine of $2,500 pursuant to s 156(1)(i) in respect of the overcharging is reversed.

6. The fine of $10,000 pursuant to s 156(1)(i) is reduced to $7,500 in respect of unprofessional conduct.

7. The Order pursuant to s 156(1)(n) that Mr CP pay the sum of $1,500 by way of costs and expenses in respect of the overcharging is reversed.

8. The Order pursuant to s 156(1)(n) that Mr CP pay the sum of $1,000 by way of costs and expenses in respect of the unprofessional comments is confirmed.

9. The direction pursuant to s 142(2) of the Lawyers and Conveyancers Act 2006 that the facts of the matter and Mr CP's name be published is reversed.

Costs of this review

1. Where a finding of unsatisfactory conduct is confirmed, it is usual for a costs Order to be made against a practitioner in accordance with the Costs Orders Guidelines published by this Office. In this instance, one finding of unsatisfactory conduct has been reversed and the other confirmed. In the circumstances it is appropriate that an award of costs of 50% be made.

2. Pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006 Mr CP 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 10 December 2013.

DATED this 12th day of November 2013

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 CP as the Applicant
Mr CQ as the Representative of the Applicant
Mrs EH as the Respondent
The Auckland Standards Committee
The New Zealand Law Society