

CONCERNING

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

AND

CONCERNING

a determination of Wellington Standards Committee 1

BETWEEN

TG
Applicant

AND

NP
Respondent

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

Introduction

[1] TG has applied for a review of the determination by the Standards Committee pursuant to section 152(2)(c) of the Lawyers and Conveyancers Act 2006 to take no further action in respect of complaints by TG about NP's conduct when representing him in connection with an application by TG's wife to set aside a prenuptial property agreement. Some of the issues complained of arise out of what has come to be known as a "reverse brief" and this decision makes comment in that regard.

Background

[2] TG and his Ukrainian partner (TH) decided to marry in January 2000.

[3] TG insisted that he and TH enter into a prenuptial agreement before the marriage took place and instructed TI (a Dunedin practitioner) to prepare the Agreement.

[4] The marriage was to take place on 21 January 2000 and on the morning of their marriage they attended at TI's office where TG signed the Agreement prepared by her. TH was then taken to the office of another solicitor for independent advice as required.

[5] The parties separated in 2005 and on 2 July 2007 TG received a letter from TH's solicitors advising that in their view the Agreement was grossly unfair and that TH had not received proper or adequate legal advice prior to signing the Agreement.

[6] TG sought assistance from TI who ultimately advised that she could not act for TG and referred him to NP.

[7] Proceedings were commenced by TH to set the Agreement aside and it is out of NP's representation of TG in these proceedings that TG's complaints arise.

TG's complaints

[8] TG stated in his letter of complaint dated 24 March 2009 that the nub of his complaint arose out of a letter dated 22 July 2008 that NP had sent to him. This followed a decision by her that she would personally assume control of TG's file after her junior had advised her that she was no longer able to continue working with TG.

[9] TG advises that he had voiced his unhappiness about apparent conflicts of interest, enormous bills, lack of attention to detail and repeated advice from the junior barrister that "with such a cheap prenuptial agreement" he could have expected trouble. In subsequent correspondence with NP, TG apologised for his "outburst."

[10] In her letter, NP referred to a history of resistance by TG to payment of fees. He considered that others, and in particular TI, should meet his costs. NP rendered an account for unbilled work-in-progress at that time and required him to make payment of that together with the sum of \$2,500.00 as security for costs that were about to be incurred in attending a settlement conference on 11 August 2008. She required these payments to be made before 28 July 2008 and advised that unless it was made she would have no option but to seek leave to withdraw from acting for TG.

[11] NP also referred to TG's attitude towards her and members of her firm as being "negative and confrontational."

[12] TG says that following receipt of that letter, he was left bewildered and intimidated.

[13] His complaints were:

- 1) That NP's conduct was threatening and intimidating in this letter and in other correspondence.

- 2) That NP had overcharged and billed for attendances which TG considered he should not be billed for. This included advice that he did not seek about remedies against TI and/or the lawyer who attended on TH.
- 3) That the firm had failed to return to him case studies that he had provided from his own research.
- 4) That NP had failed to follow instructions or make use of material provided by him which he considered would destroy TH's credibility and force her into settling at the figure offered by him.
- 5) NP's poor preparation and presentation at the settlement conference as well as a general lack of attention to the file, which included a failure to obtain supporting affidavits.
- 6) Poor accounting practices, failing to provide receipts and to credit payments made.
- 7) Misappropriation of money held in the trust account of CCC, NP's instructing solicitors.
- 8) Failing to provide the appropriate client information.

The Standard Committee determination and the application for review

[14] Prior to completing its determination, the Standards Committee obtained a report from a costs assessor on NP's bills. The Assessor recommended that the bills of costs be upheld, but commented that NP could have communicated better with TG as to his responsibility for certain costs.

[15] The Committee also obtained and reviewed NP's file before completing its determination.

[16] Following consideration of all of the material provided, the Committee made the following determinations. I have recorded these under the headings used by the Committee, which largely reflect the points of TG's complaints as identified above.

Threatening and intimidating behaviour

...In the Committee's view, in the circumstances of what had become a rather difficult relationship between [NP] and [TG], a concern about payment [did] not

seem unreasonable. The action proposed by [NP] would be lawful and therefore could not be categorised as threatening or intimidating behaviour.

Collusion/conflict of interest

The Committee found no evidence of collusion or conflict of interest. It commented that “when it reached the point where [TI] may have been required to provide affidavit evidence in the proceedings, [NP] sought a change of instructing solicitor to ensure no conflict of interest would occur.”¹

Not taking instructions

The Committee considered that there was no evidence that NP did not follow all proper instructions.

Confusion or unfamiliarity with the file

The Committee noted that “[TG] was not impressed with [NP’s] performance as an advocate at the settlement conference.” The Committee determined however that:

whether her performance was lacking or not, it did not appear to have led to any consequences that would require disciplinary action nor [did] it appear to have resulted in any adverse comment from the presiding judge.

Outrageous charges

The Committee accepted the costs assessor’s report and found that the bills of costs were fair and reasonable. It therefore determined that it had no jurisdiction to review the [bills issued] before 1 August 2008 and upheld the bills issued after that date.

Inadequate accounting procedures

Whilst the Committee observed that “invoicing could have been of a better standard, it was not so lacking as to constitute a breach of the Rules.”

Misappropriation of money

The Committee considered that this was a very serious complaint. It arose from that fact that CCC paid NP \$99.42 on 29 January 2009. This appears to have been the amount left of the funds held in trust by that firm for TG. It was paid in part payment of an invoice of 17 December 2008 for \$2090.53.

¹ In fact TI was never considered to be NP’s instructing lawyer.

The Committee stated that this complaint was misguided and appeared to arise from TG's misunderstanding of the relationship between a barrister and an instructing solicitor. It noted that the funds paid into CCC trust account were held on the instruction they be used to pay NP's fees. It considered that NP had not misappropriated funds. The Committee considered that, having paid the funds to the instructing solicitors for NP, TG could not instruct NP not to claim for her fees. NP appropriately invoiced CCC for fees owing and CCC paid her the \$99.42 remaining in the trust account. The Committee considered that CCC was obliged to make this payment, both under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and in accordance with TG's instruction that it be used to pay such fees.

It concluded that there was no evidence of wrongdoing on the part of NP or CCC.

Failure to provide obligatory information

This complaint refers to [NP] not providing [TG] with a letter of engagement setting out the client care information required by the Lawyers and Conveyancers Act 2006.

The Committee noted that:

1. [TG] first instructed [NP] prior to the Act coming into force [and] there was no such requirement under the previous Act.
2. Even under the present Act, there [was] no obligation for [NP], as barrister receiving instructions from a solicitor, to provide a letter of engagement, unless this [was] specifically requested.

There was therefore no breach of the former or the current legislation.

[17] As a result of its conclusions, the Standards Committee determined pursuant to section 152(2)(c) of the Lawyers and Conveyancers Act to take no further action in respect of the complaint. The Committee however added some guidance for NP as follows:

- a) That she should provide sufficient detail in her bills of costs to enable her lay clients to understand the nature of the work to which they relate;
- b) That she should refer payments and receipts to her instructing solicitors for processing; and
- c) That she should improve her liaison with her instructing solicitors and clients so that her role and duties as counsel were better understood.

TG's application for review

[18] TG was not satisfied with the determination of the Standards Committee. He seeks a reduction of fees and compensation for the aggressive manner in which NP bullied and threatened him as well as compensation for her lacklustre settlement performance which he considers cost him \$5,000.00 more than necessary. He also seeks some action be taken against NP for removal of funds from his trust account without instruction from him.

Review

[19] A review hearing was held in Dunedin on 14 November 2012 attended by TG and NP, who was accompanied by NN.

Reverse briefs

[20] As noted in the introduction to this decision, some of the issues which arise in this matter do so directly as a result of the nominal adherence to the intervention rule. NP is a barrister sole. Rule 14.4 of the Conduct and Client Care Rules² provides as follows:

Subject to Rules 14.6, 14.7 and 14.8, a barrister sole must not accept instructions to act for another person other than from a person who holds a practicing certificate as a barrister and solicitor.

[21] This Rule (and Rule 11.03 of the Rules of Professional Conduct for Barristers and Solicitors in force prior to the CCCR) encapsulates what is commonly referred to as the "intervention rule".

[22] Rule 14.5 requires the Law Society to "review and determine whether to keep in force the intervention requirements set out in Rule 14.4...The Law Society must commence the review within 18 months after the date on which these rules come into force..." The Rules came into force on 1 August 2008 but as yet there has been no amendment to the Rule.

[23] In the meantime, a practice has arisen which has come to be known as a "reverse brief" whereby a barrister will arrange for a solicitor to act as his or her instructing solicitor. There is no issue with that in itself.

² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2006.

[24] Where the practice falls down, is when neither the barrister or the lawyer who accepts the reverse brief fulfils their obligations in terms of the Conduct and Client Care Rules, and the barrister deals directly with the client as if she or he were instructed directly.

[25] One of the issues in this complaint arises from a failure to meet the obligations imposed by the Rules in relation to the funds held by the firm of CCC for NP's fees. The amount in question was only small, but nevertheless has resulted in TG's complaint.

[26] TG never met anyone from CCC. All payments were made or delivered to NP's offices. He never received any statements from CCC. He never received any comments or advice from that firm, and to all intents and purposes, all that was happening was that NP was making use of the firm's trust account.

[27] This has resulted in an incorrect view by NP of her entitlement to the funds held by that firm. NN submitted that as the funds had been paid by TG as security for NP's costs, she was entitled to require that firm to make payment to her of the money held once she had rendered her bill of costs.

[28] A payment made by a client on account of costs does not relieve the instructed solicitor from the obligations imposed by section 110 of the Lawyers and Conveyancers Act or Regulation 12(6) of the Trust Account Rules.³

Section 110(1) Lawyers and Conveyancers Act

- (1) A practitioner who, in the course of his or her practice receives money for, or on behalf of any person—
 - (b) must hold the money, or ensure that the money is held, exclusively for that person, to be paid to that person or as that person directs.

Regulation 12(6) Trust Account Rules

A practice may make transfers or payments from a client's trust money only if—

- (b) The practice obtains the client's instruction or authority for the transfer or payment, and retains that instruction or authority (if in writing) or a written record of it.

[29] Consequently, CCC required specific instructions from TG to make any payments from funds held on his behalf. This could have been in the form of a general instruction

³ Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

to make payment of any bills of costs rendered by NP, but as TG had not had any communication with that firm, no such authority existed.

[30] In this regard, the comments from the Standards Committee that TG's complaint was misguided and arises from a misunderstanding of the relationship between a barrister and an instructing solicitor are somewhat unfair. NP's relationship with her instructing solicitor was minimal and TG was provided with no information at all about the role of CCC. He had no contact with that firm, so it is unsurprising that his understanding was misinformed. His view of the relationship was based on what was presented to him.

[31] TG argues that it was NP who breached her obligations by seeking payment. I do not see it that way. Instead, it was the firm of CCC who made the payment without authority and it was to that firm that TG should have directed his instruction that no further payment was to be made. This comment is not in any way intended to be a criticism of TG, as he had had no information from NP or CCC about the role of the instructing solicitor.

[32] In coming to this view, I differ from that of the Standards Committee, which considered that once the payments were made to CCC (through NP's office) they were then within the control of NP, whose only obligation was to present an invoice to CCC and request payment. Unless that was coupled with an authority from TG to CCC that the funds were to be paid without reference to TG, then the provisions of section 110(1) and Regulation 12(6) required that firm to obtain approval from TG to make the payment requested by NP.

[33] As this review is not a review of a complaint against CCC, no consequences will follow. In addition, I observe that in this particular case, as the amount in question was minimal, no real harm was done. However, it is important that barristers and solicitors who accept reverse briefs should take note of the fact that until the intervention rule is amended, the Rules remain to be observed, and practitioners who do not fulfil their obligations in terms thereof remain exposed to the disciplinary consequences of ignoring the same. It is also important to recognise that although funds may be paid into a solicitor's account for payment of a barrister's fees that does not mean that the funds may be paid at the direction of the barrister without authority from the client.

[34] As these comments are somewhat critical of CCC, this section of my decision was referred to that firm for comment before dissemination. TK responded with

comments by way of letter dated 23 January 2013. He advised that he believed the procedures of his firm and those of NP have been improved by the addition of an irrevocable instruction and authority in the terms of engagement now required under the Conduct and Client Care Rules. By this I assume that he refers to an irrevocable instruction and authority for any funds paid to the firm to be applied to the payment of NP's fees. That may address the issue with regard to funds held by the firm, but does not of course mean that the other obligations imposed on both the instructing solicitor and the barrister are complied with, and while the intervention rule remains, those obligations continue.

[35] TK also advised that he was unable to confirm that there was no contact between TG and his firm because of the passage of time. It does not seem however that there is any challenge to the evidence provided by TG in this regard.

[36] Although some of the further comments made by TK may represent incorrect assumptions as to the obligations of an instructing solicitor, it would not be appropriate to refer to or discuss these comments further in this decision as it does not, as noted above, relate to a complaint about CCC.

Threatening and intimidating conduct

[37] TG complains that he was threatened and intimidated by NP and in particular by her letter of 22 July 2008. In that letter NP required her accounts to be brought up to date and a payment made on account of future costs, failing which she advised that she would seek leave to withdraw from representing TG.

[38] This letter was sent after NP had assumed control of the file after her junior had advised that she was unable to continue working with TG. This in turn followed what could be described as a confrontation between TG and the junior barrister, for which TG subsequently apologised.

[39] From the outset of his instructions to NP, TG had made it clear that he considered TI was responsible for his costs by reason of her obligations under the Consumer Guarantees Act. He referred NP's first account to TI for payment, who subsequently advised that she did not intend to pay NP's bills.

[40] At the time NP wrote her letter of 22 July, no accounts were outstanding. Nevertheless, the overall impression that TG gave, was that he was reluctant to accept liability for the costs. In addition, the relationship between TG and NP and her staff

was not one which indicated that TG had trust and confidence in the work that they were undertaking for him.

[41] NP noted that TG had engaged in:-

- Repeated challenges to advice on areas that were well within the knowledge of the junior barrister.
- A high level of intervention by TG in the normal administration of the file.
- Accusations by TG that the junior barrister had contributed to delays in resolving the case due to her seeking a one week extension to file TG's second affidavit.
- Repeated accusations by TG that the junior barrister was colluding with TI and generally not acting in his best interests.
- Requests that the junior barrister should, pursuant to some obligation, undertake certain research free of charge.
- Suggestions that either she or her colleagues or the legal profession as a whole should pay TG's fees.

[42] It is reasonable to accept that NP's perception of the relationship was supported by TG's conduct. NP therefore determined that she would assume control of the file, but intended to make it clear that she would not continue to act for TG if his attitude continued to be what she considered was negative and confrontational. A change in this attitude by TG would be evidenced by his willingness to readily make payment of the amounts required by NP.

[43] TG must take some responsibility for the tone of NP's letter. He cannot have expected that NP and her staff would respond positively to his conduct towards them, and it is therefore reasonable for NP to be somewhat frank and direct to him.

[44] In the context of the relationship between TG and NP and her staff, her letter cannot be seen as threatening and intimidating.

Overcharging

[45] In his complaint about costs, TG identifies a number of specific time entries which he considers he should not have been charged for. He alleges that NP "uses

every possible legitimate opportunity, and some illegitimate ones, to rack up her charges". He cites by way of example, charging for a brief phone call as a full minute, and charges for both court waiting time and waiting time for appointments. He also refers to being charged \$50 twice for reading a letter, as well as a charge of \$200 for a settlement attendance when he says he completed the settlement directly.

[46] TG has examined NP's time records in some detail. However, lawyers' time records do not necessarily record in detail the work that was carried out at the time. They are often brief and somewhat cryptic and are not intended to be the primary record of the activity which took place on the file. This was borne out at the review hearing when NP explained the entry relating to the settlement of the proceedings.

[47] More importantly, a complaint against a lawyer of overcharging does not differ in any way from a general complaint about a lawyer's conduct. Before an adverse finding may be made against a lawyer with regard to charging, there must be a finding that there has been a breach of Rule 9 of the Conduct and Client Care Rules which require a lawyer's bill of costs to be fair and reasonable.

[48] Consideration of whether a lawyer's bill of costs is fair and reasonable does not involve a process whereby the bill is subjected to a detailed scrutiny and then adjusted. What is required is to determine whether a lawyer's bill of costs is fair and reasonable within an acceptable band. In this instance, the Standards Committee commissioned a report from a Costs Assessor with instructions to examine the bills of costs, and to provide an opinion as to whether she considered that the bills were fair and reasonable.

[49] In making this assessment, a Costs Assessor and the Standards Committee must take note of the direction from the High Court in *Chean and Luvit Foods International Limited v Kensington Swan*,⁴ to determine whether the fee is fair and reasonable "in the round".

[50] The Costs Assessor reviewed the nine bills of costs rendered by NP. She applied the costing factors set out in Rule 9.1 of the Conduct and Client Care Rules and came to the view that the fees rendered were fair and reasonable. She took note of the fact that NP had substantially reduced her first account from the amount recorded in her time records, and also took note of the degree of difficulty and NP's experience. She also pointed to the fact that although TH subsequently abandoned as

⁴ HC Auckland, CIV 2006-404-1047, 7 June 2006.

unsustainable one of her grounds to challenge the Agreement, nevertheless NP and her staff were obliged to research the matter to counter the claim.

[51] The Assessor concluded that NP could have communicated better with TG with regard to matters around costing, but overall was satisfied that there were no grounds for any adverse findings against NP.

[52] The Standards Committee endorsed the views of the Costs Assessor.

[53] TG considered that the Assessor was not impartial in her report as she referred to NP's reputation and experience. He concluded his comments by saying that "[i]t has become increasingly clear to me of the futility of expecting self-interested parties to impartially review their own members."

[54] TG is entitled to his views. I do not however accept that the Assessor was not impartial as suggested by TG. That is an unwarranted and unreasonable accusation to make. The Costs Assessor correctly took note of all of the fee factors which may be taken into account when assessing a fee, one of which is "the experience, reputation, and ability of the lawyer".⁵

[55] TG has also made particular mention of the fact that NP and her staff provided advice concerning the possibility of bringing a claim in negligence against either TI or TH's lawyer. He says that he did not seek this and therefore he should not have to pay for it.

[56] It is clear from the correspondence, that TG considered that TI and / or TH's lawyer were responsible for the challenge to the prenuptial Agreement. As a result, he considered that he would have a claim in negligence against them and that he could seek to recover his losses from them.

[57] It was therefore an important factor to be taken into account when considering any settlement with TH. NP and her staff advised TG that he could not necessarily rely upon recovery as he anticipated.

[58] A lawyer will often be alert to issues that are relevant to a client's position which are beyond the recognition of the client. If the lawyer did not draw the client's attention to such matters, he or she would certainly stand exposed to a claim against him or her

⁵ Rule 9.1(g) Conduct and Client Care Rules.

in negligence. It is after all, the role of a lawyer to advise a client on all matters that could impact on the client's position.

[59] If NP had allowed TG to proceed on a mistaken understanding that he could recover his losses from third parties, and that turned out to be incorrect, then quite understandably, TG could well ask why she had not alerted him to that. The advice provided by NP and her staff was properly given as it was clearly a relevant factor to the overall approach to this matter. It was advice for which TG was properly charged.

[60] TG alleges that this constituted collusion or a conflict of interest in that NP was endeavouring to dissuade TG from pursuing recovery against TI. There is no substance to these allegations for the reasons stated above.

[61] The final determination as to whether or not NP had breached the Conduct and Client Care Rules through her billings is made by the Standards Committee. The Committee includes lay persons. TG's comment that the Committee was "self-interested" and could not impartially review its own members is not accepted.

[62] I do not consider that there has been any error on the part of the Costs Assessor or the Committee and I too consider that in the circumstances NP's billing conduct has not breached the obligations imposed by the Conduct and Client Care Rules.

Failure to follow instructions

[63] TG provided a detailed analysis of the affidavit provided by TH to NP and suggested that she should make use of this analysis to destroy TH's credibility and thus induce her to agree to TG's settlement offer. He alleges that NP did not do so, and that as a result, he ended up paying more than he should have to settle the matter. In support of this contention he points to the fact that settlement was readily achieved when this information was put to TH and her lawyers.

[64] The issue is that TG considered that NP had failed to follow his instructions. He acknowledges however that he did not directly instruct NP to put this information forward, but says that he did not do so because he found that "[NP] does not respond well to accepting instructions". Nevertheless, he considered that his intention was clear and that NP had ignored his letter.

[65] NP on the other hand, advised that she had formed the view that if the material had been put forward at that stage, it would have been counter-productive as she considered this would have caused TH herself to become more entrenched in her position. This was a valid judgment call for NP to make. She was the one charged with effecting a settlement and if TG did not have confidence in her ability to do so in a manner that was in his best interests, he should perhaps have considered withdrawing his instructions.

[66] In the context of a negligence claim, the Court in *Saif Ali and another v Sydney Mitchell & Co. (a firm) and others*⁶ stated:-

A barrister is under no duty to be right; he is under a duty to exercise reasonable care and confidence. Lawyers are often faced with finely balanced problems. Diametrically opposite views may and not infrequently are taken by barristers and indeed by judges, each of whom has exercised reasonable and sometimes far more than reasonable, care and competence. The fact that one of them turns out to be wrong certainly does not mean that he has been negligent.⁷

[67] NP cannot be accused of negligence in making the judgment as she did not utilise the material provided by TG at that time. It follows therefore that she cannot be considered to be in breach of the requirements of competence and diligence required by section 12(a) of the Lawyers and Conveyancers Act.

[68] In addition, TG did not directly instruct NP to put this information forward and she is not therefore in breach of the requirement of Rule 13.3 of the Conduct and Client Care Rules which requires a lawyer to obtain and follow a client's instructions on significant decisions in respect of the conduct of litigation.

NP's accounting procedures

[69] NP's bills of costs contained minimal information. She did not give credit for the full amount paid in advance by TG, and did not issue receipts for all payments made by him. Receipts were only issued after they were requested.

[70] To some extent, these complaints are addressed by the comments made in the section of this decision relating to reverse briefs. If NP and CCC had met their obligations in terms of the Rules, then such complaints would not have arisen. However, where a barrister chooses to disregard those Rules, the obligations imposed on a lawyer cannot be disregarded altogether. In *Auckland Standards Committee No.1*

⁶ [1980] AC 198.

⁷ *Ibid* at 231.

*v Hart*⁸ the Tribunal had this to say about the obligations of a barrister in these circumstances:-

[137] Section 4 [Lawyers and Conveyancers Act] also provides that a fundamental obligation on every lawyer is to protect, subject to his or her own overriding duties as an Officer of the High Court and under any other enactment, the interests of his or her clients.

[138] In the Tribunal's view, those fundamental purposes would be undermined if, in circumstances where a barrister is in reality dealing with and receiving fees directly from a client, and where the instructing solicitor has at best minimal involvement in a matter, a barrister can seek to rely on the interposition of an instructing solicitor to evade his or her professional obligations.

[71] It follows therefore that a barrister in these circumstances has an obligation to provide a client with proper and accurate statements and invoices in the same way that a client could expect to receive from a solicitor, although these comments should not in any way be seen as condoning the practice of ignoring the intervention rule, particularly with regard to the handling of client funds.

[72] The specific complaints with regard to NP are that:-

1. Her bills contained minimal information.
2. She did not account properly to TG in that she did not credit him with payments made.
3. She did not provide receipts for payments in cash or receipts for all payments when requested.

[73] The Committee noted that the bills were addressed to CCC, but given their lack of involvement in the matter, this could not be considered to be an appropriate excuse for the lack of, and incorrect, information provided and for the failure to properly issue receipts. The Committee did however make recommendations to NP in its determination and these have been set out in [17] above. In the circumstances of this case, I consider that was an appropriate response to the issues involved.

[74] The Rules do not of course directly impose these obligations on a barrister. Applying the comments of the Tribunal in *Hart*, it may be that in circumstances such as this, the failure to comply with these obligations will result in a greater penalty. However, given my endorsement of the Standards Committee approach in this

⁸ [2012] NZLCDT 20.

instance, I hesitate to make any further comment as to the possible outcome in the future in circumstances such as these.

Miscellaneous

[75] The failure to provide client information can be readily dealt with. NP was instructed in 2007 prior to the commencement of the Lawyers and Conveyancers Act on 1 August 2008. There was no requirement at that time to provide the client information referred to in Rules 3.4 and 3.5 of the Conduct and Client Care Rules. Consequently, NP cannot be held accountable in that regard. I would however again observe that the Tribunal in *Hart* considered that a barrister is required to provide this information where the involvement of an instructing solicitor is minimal.

[76] Again, this raises the issue as to the acceptance of reverse briefs, and a solicitor's obligations in that situation. I merely observe here, that as yet, the Rules have not been amended, and until they are, observance with the Rules is required.

[77] The final matter to be addressed in TG's complaint is that he was not provided with material which he himself had given to NP's office. They advised him that this material had been lost. He was also denied access to research carried out by that firm.

[78] There is no evidence on which any decision can be made about whether or not the material provided by TG was in fact lost, and I am unable therefore to make any finding in that regard. With regard to the firm's own research, that is material which properly belongs to the lawyer, and it is not required to be provided to a client if the lawyer does not choose to do so.

Summary

[79] In summary, therefore, I do not consider that there is any reason to come to a different conclusion to that of the Standards Committee. I do, however, consider the operation of the reverse brief is problematic where the barrister and the instructing solicitor do not meet the obligations imposed on them by the Rules, and until the intervention rule is amended (which may very well result in an amendment to a barrister's obligations) the existing Rules should be complied with.

Decision

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

DATED this 1st day of February 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:

TG as the Applicant
NP as the Respondent
NN as the Respondent's Representative
TJ of CCC
Wellington Standards Committee 1
The New Zealand Law Society