

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the [North Island ] Standards Committee

**BETWEEN**

**MR ZA**

Applicant

**AND**

**MR YB**

Respondent

**Decision as to Costs**

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

**Introduction**

[1] On 15 August 2014 I issued a decision in which I confirmed the determination of the [North Island] Standards Committee to take no further action in respect of a complaint by Mr ZA against Mr YB.

[2] Mr YB sought an award of costs against Mr ZA and at the conclusion of the decision I sought submissions from the parties with regard to costs.

[3] Both parties have supplied submissions.

**The parties' submissions**

[4] In my decision dated 15 August, I recorded Mr YB's application for costs and noted:

There is the potential for costs orders against Mr ZA both in favour of the New Zealand Law Society and Mr YB. Mr YB is a self-represented party and the general principles relating to awards of costs to such a person apply.

[5] In his submissions, Mr YB stated:<sup>1</sup>

...I must be mindful of the remarks made in the decision about costs considerations for a self-represented party. More than that, I am particularly sensitive to the candid comments the Review Officer made about the costs to the profession and to his office of a fruitless application such as this one by Mr ZA.

[6] He therefore withdrew his application for costs.

[7] Mr ZA made the following statements in his submissions:<sup>2</sup>

This is an issue that cannot reach a satisfactory conclusion. However, as Mr. YB's (sic) rightly points out, we need to be aware of any costs to the profession and for those reasons also request that the Review Officer spend no further time in respect of any further consideration of an application for costs.

### **Decision**

[8] Mr ZA's submission overlooks the fact that I sought submissions from him with regard to the potential for an award of costs against him in favour of the New Zealand Law Society. The reasons for this will have been apparent both from the comments made by me at the review hearing and in my decision. I refer to the following paragraphs in my decision:

[23] At the review hearing Mr ZA conceded that whilst he personally considered Mr YB's conduct unsatisfactory he could not argue, nor wished to argue, that a "member of the public" would necessarily consider this to be the case.

[24] This frank concession by Mr ZA is somewhat disturbing and reinforces the impression that Mr ZA has used the complaints process as a tactical weapon to attempt to negotiate down Mr YB's fees. The disturbing feature of this concession is that it would seem Mr ZA has abused the complaints process without regard to the fact that firstly, the complaints procedure (and this Office) is funded by the legal profession and secondly, without regard to the impact and effect on Mr YB.

...

[27] The impression that Mr ZA has abused the complaints procedure is further reinforced by the fact that he has not made payment to Mr YB of undisputed amounts. He advised at the hearing that he was able to pay Mr YB and could write a cheque immediately to pay him. He advised that he had not done so because he had just "dug his toes in" and refused to pay because of an antipathy towards Mr YB. This is a surprising acknowledgement by a lawyer of conduct towards another lawyer.

[9] Section 210(1) of the Lawyers and Conveyancers Act 2006 provides:

The Legal Complaints Review Officer may, after conducting a review under this Act, make such order as to the payment of costs and expenses as the Legal Complaints Review Officer thinks fit.

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<sup>1</sup> Submissions on costs YB to LCRO dated 28 August 2014 at [6.0].

<sup>2</sup> Letter ZA to LCRO (4 September 2014) at [2]-[3].

[10] This Office has often observed that in exercising the right to apply for a review of a Standards Committee determination, applicants should not be penalised by having awards of costs being made against them. In an unpublished decision the Legal Complaints Review Officer also noted that:<sup>3</sup>

where the application for review was reasonable (whether or not the decision of the Standards Committee is modified or reversed) and the parties have acted appropriately, parties will generally be expected to bear the costs they incur in being a party to the review.

[11] Mr YB has responsibly abandoned his application for costs following comments made at the review hearing. Mr ZA has not surprisingly endorsed that approach. However, I do not consider that Mr ZA has acted appropriately in applying for this review and refer to the comments recorded above and in the decision of 15 August 2014.

[12] Costs awards by this Office are made on the basis that the party against whom the award is made meets one half of the costs of a review. In the case of a straightforward review where a hearing is conducted, the amount set out in the Costs Orders Guidelines established by this Office, is \$1200. This review could have been conducted on the papers with consent from the parties, but I determined to conduct a hearing in the hope that the parties would have resolved this matter between themselves rather than spend time in attending a hearing, and in the hope that the parties could be convinced to resolve the matter at the hearing. Unfortunately, this did not occur.

[13] There is therefore an argument that an order for costs should be reduced from the amounts set out in the Guidelines. However, in the face of the surprisingly frank acknowledgements from Mr ZA referred above and in the decision of 15 August, there is no reason to reduce that amount, particularly as the amounts specified in the Guidelines represent one half of the costs of a review.

[14] In the circumstances I consider that Mr ZA should contribute the sum of \$1200 towards the costs of this review, and pursuant to section 210(1) of the Lawyers and Conveyancers Act 2006 order accordingly. Such sum is to be paid to the New Zealand Law Society by no later than 8 October 2014.

**DATED** this 8<sup>th</sup> day of September 2012

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<sup>3</sup> Unpublished decision LCRO 39/2009 at [64].

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O W J Vaughan

**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr ZA as the Applicant

Mr YB as the Respondent

The [North Island] Standards Committee

The New Zealand Law Society