LCRO 05 /08

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 1
BETWEEN	**CLIENT S** of North Auckland
	Applicant
AND	**LAWYER J** of Whangarei
	Respondent

DECISION

Background

[1] This is a review of a decision of the Auckland Standards Committee 1 in respect of a complaint by Client S against Lawyer J. Client S complained to New Zealand Law Society in respect of the conduct by Lawyer J of certain criminal proceedings in which her son, was the defendant. Lawyer J is a partner in Firm B. Lawyer J acted as counsel for client S's son. The Standards Committee dismissed the complaint and Client S now applies for that determination to be reviewed.

[2] Client S's son was charged with two counts of arson in conjunction with a co-offender (who was dealt with by the Youth Court). The first charge was in respect of certain public toilets at "a park" was the more serious as it involved a "risk to life". It also appears to be the charge to which Client S's son had a stronger defence. The second arson, which occurred on the same evening, related to a portaloo and was less serious with no risk to life alleged. It was also the charge to which a weaker defence existed (given the fact that Client S's son was aware of the former incident and had taken his co-offender to the second toilet and was present at the incident).

[3] The Legal Services Agency assigned a Counsel A to assist with the proceedings as counsel on a legally aided basis. Initially Client S's son was granted bail, but as a result of four breaches of bail he was placed in custody on 2 May 2008 when he appeared at the depositions hearing on that date. Client S's son chose to plead guilty to both charges of arson. It appears that the fact that he would have been remanded for a considerable period of time in custody pending any trial on a not guilty plea was a dominant consideration in him reaching this decision. It also appears that he entered that plea against the advice of counsel (Counsel A at that time) and under the impression that a sentence which was either non-custodial or home detention would be likely.

[4] On 3 May Client S rang her son (who remained in custody) and discussed this outcome. Client S made some enquiries of another lawyer and discussed matters further with her son. The result was a decision to change counsel to Lawyer J. Lawyer J advised that the appropriate course of action was to seek to vacate the guilty plea in respect of the first charge of arson (which was the most serious charge) and to seek e-bail pending trial. He agreed to act for her son provided he was paid privately (and not on the basis of a legal aid grant) in respect of the vacation of plea and e-bail matters. He indicated he would be prepared to conduct the trial itself on the basis of a legal aid grant. Client S agreed to these terms of retainer. It seems to have been understood that Client S personally would be liable for fees incurred (rather than her son himself).

[5] Lawyer J met Client S's son on 28 May to take instructions. Prior to this communications and instruction had been largely through Client S. It appears that there was some confusion over the date when the respective preliminary applications were to be heard. The matter was eventually set down to be heard in Auckland in July 2008 before Justice Harrison. At that hearing Justice Harrison made a suggestion to counsel about how this matter might be disposed of. That suggestion and how it was dealt with is at the centre of the complaint.

[6] It appears that Justice Harrison made a clear indication that if Client S's son withdrew his application to vacate the guilty plea there was a high likelihood that he would be sentenced to a period of home detention rather than a term of imprisonment. After taking instructions from Client S's son, Lawyer J withdrew the application to vacate the guilty plea. Ultimately Client S's son was sentenced on both arsons to a term of six months home detention.

[7] On 20 January 2008 a telephone conference in respect of this review was held and it was agreed that there were three key issues in the complaint:

- Whether Lawyer J had placed undue pressure on Client S's son to plead guilty;
- Whether Lawyer J was discourteous to Client S at a meeting of 5 August; and
- Whether the fees charged by Lawyer J were so excessive as to amount to misconduct.

The Standards Committee Determination

[8] Client S complained to the Law Society in respect of Lawyer J's conduct on 16 September 2008. After hearing from Lawyer J in the matter the Auckland Standards Committee 1 resolved to take no further action on the matter. It did so in reliance on section 138(1) (d), (e) and (f) of the Lawyers and Conveyancers Act 2006 (the Act).

[9] Section 138(1) (d) of the Act provides that that a Standards Committee may resolve to take no further action where it appears that the person alleged to be aggrieved (Client S's son) did not desire that action be taken. Lawyer J in his response to the Committee stated he had spoken to Client S's son by telephone on 29 September 2008 and that "Client S's son was surprised by the complaint and did not appear to support it". However this statement was effectively rebutted by a letter from Client S's son of 10 October 2008 to the Committee. While that letter did not specifically address the question of whether the complaint was supported, it is clearly written in support of the complaint. There was no reliable evidence upon which the Committee could have reached the conclusion that Client S's son did not wish the action/complaint to continue.

[10] The Committee erred in seeking to rely on s 138(1) (d) of the Act.

[11] Section 138(1)(e) of the Act provides that the Committee may resolve to take no further action where "the complainant does not have sufficient personal interest in the subject matter of the complaint". Throughout this piece of litigation Client S was intimately involved with the conduct of the proceedings. Moreover, her complaint relates in part to the way Lawyer J acted towards her, and the amount he charged her. Section 138(1)(e) is designed to ensure that officious third parties do not use the complaints system to harass lawyers with whom they have no particular relationship, or for some other collateral purpose. That is not the case here.

[12] The Standards Committee erred in resolving to take no action on the basis that Client S did not have sufficient personal interest in the subject matter of the complaint.

[13] Section 138(1)(f) of the Act provides that the Committee may resolve to take no further action where "there is in all the circumstances an adequate remedy or right of appeal … that it would be reasonable for the person aggrieved to exercise". The Committee in its decision appeared to conclude that because Client S's son had not elected to maintain his application to vacate his plea (or make a further application) that the complaint was poorly founded.

[14] While the fact that Client S's son pleaded guilty to the arson underlies this complaint, the conduct complained of would not be cured by the vacation of the plea. The matters in issue concern allegations of breaches of professional standards by Lawyer J. It would be appropriate to take no further action on a complaint on the basis of s 138(1)(f) where the complainant is seeking to attack an existing decision of the court or is seeking a remedy inconsistent with that decision (i.e. a collateral attack). The section should be read in light of the scheme of the Act and its purposes which are stated in s 3 and include the purpose "to protect the consumers of legal services and conveyancing services". The power to dismiss a complaint on the basis of s 138(1)(f) should be used sparingly. It should be reserved for those situations where not only is there an adequate remedy in some other forum, but it is also reasonable to expect the complainant to use that other forum rather than the complaints process. Neither is the case here.

[15] The Committee erred in relying on s 138(1)(f) in resolving to take no further action on the complaint.

This Review

[16] Client S applied for the decision of the Standards Committee to be reviewed by an application received on 28 November 2008. By s 202 – 204 of the Act the Legal Complaints Review Officer has wide powers to review the inquiry of the Standards Committee and to undertake enquiries of his or her own. In this matter it was resolved to give the parties a further opportunity to set out and respond to the complaint. It was also resolved to enquire of Client S's son whether he wished the complaint to continue. That enquiry was made by letter on 9 December. Client S's son responded by email on 22 December in the affirmative.

[17] Given that it has been concluded that the Standards Committee made errors in reaching its determination, it would be open to require the Standards Committee to inquire into the complaint further pursuant to s 209 of the Act. However, in light of the extent of the enquiry undertaken and the material available to this office a substantive review of this complaint has been undertaken.

[18] The parties have consented to this matter being considered without a formal hearing and therefore in accordance with s 206(2) of the Lawyers and Conveyancers Act this matter is being determined on the material made available to this office by the parties, the Standards Committee and Client S's son. It is noted that that includes the file or Lawyer J in this matter which was made available to the Standards Committee and provided by it to this office.

[19] At the outset it may be useful to note that the primary obligations of Lawyer J were owed to Client S's son as his client. While clearly Client S, as the clients mother had a strong interest in how the proceedings were managed, ultimately the control of the proceedings was in Client S's son's hands.

The plea and sentence

[20] The key complaint made by Client S is that Lawyer J acted improperly at the hearing on 10 July and in particular that he placed undue pressure on Client S's son to abandon his application to vacate the guilty plea. Associated with that complaint are a number of other secondary allegations such as the allegation that the sentencing proceeded on the basis of erroneous information that Lawyer J did not correct, that Justice Harrison was not fully appraised of the file and Lawyer J should have deferred the matter until the Judge fully understood the issues. The question of whether Mr Fairly acted appropriately will be considered globally in light of the matters raised by Client S.

[21] As noted above Client S was concerned that Justice Harrison indicated that he had only briefly looked at the application to vacate the guilty plea. She is concerned that Justice Harrison was not adequately informed, the inference being that Lawyer J failed in ensuring this was the case.

[22] Lawyer J states that Justice Harrison did not indicate that he had not read the file or had insufficient knowledge of it, but rather words to the effect that he had not reached any conclusions on the material before him, but was prepared to make a

suggestion for consideration by Client S's son. It can be noted that the substance of the offer made suggests that Justice Harrison had read Lawyer J's submissions and Client S's son's affidavit which had been filed in the Court. It is from those documents that his honour could have identified the fact that a dominant consideration on pleading guilty appeared to have been the belief of Client S's son that he would not be placed in custody. In any event, whether or not Justice Harrison had read the file cannot be placed at Lawyer J's door. Even had this been the case the role of Lawyer J was to use his best professional judgement in promoting and protecting the interests of Client S's son.

[23] I am satisfied that Lawyer J did not act inappropriately in putting the suggestion made by Justice Harrison to Client S's son rather than seeking to defer the matter. In such a situation it was appropriate for the suggestion to be put to Client S's son. It can be observed that it might have been detrimental to defer consideration of the matter, as the proposal may not have been renewed at a later date.

[24] Client S notes that she was "shocked" at the fact that Client S's son was required to decide this in a short time frame (20 – 30 minutes). This response is understandable given the fact that prior to this things had moved slowly by comparison. However, it should be observed that considerable difficulty had been experienced in getting the matter before a judge and that one consideration which was in the front of everybody's mind was whether it was possible to get Client S's son out of custody more or less immediately. This certainly seemed to be a dominant (and reasonable) consideration for Client S's son. The pressure to decide the matter more or less immediately was not due to any conduct by Lawyer J and he acted reasonably in response to the situation as it arose.

[25] Lawyer J spoke to Client S's son by telephone at the Ngawha prison. It appears that in an initial conversation in which the proposal was explained and then a subsequent conversation some twenty minutes later. Lawyer J says that this interval was to give Client S's son some time to reflect on the proposal. It is clear that at this time Client S's son resolved to go along with the proposal and withdraw his application to vacate the guilty plea. He was then granted e-bail and the matter was remanded for sentencing on 19 August. At sentencing before Justice Harrison he was sentenced to six months home detention.

[26] It is perhaps worth noting that underlying this aspect of the complaint is the fact that Client S is resolute in her belief that her son, Client S's son, is innocent of the park

arson - to which he pleaded guilty. In a large part her complaint proceeds on the basis that considerable injustice was caused to her son as a result of that guilty plea. Some observations should be made in this regard. Firstly, whether or not Client S's son would have been acquitted at trial would have depended on what evidence was put before the court and who the judge or jury believed. There is no certainty that he would have been acquitted. It is appropriate for Lawyer J to be circumspect in respect of the guilt or innocence of Client S's son. It is perhaps unfortunate that Lawyer J expressed some personal belief in the innocence of Client S's son (for example in a letter of 28 May 2008 he noted "The writer believes Client S's son"). This undoubtedly reinforced the belief of Client S that her son was innocent and that he would be acquitted. This may have contributed to the consequent sense of injustice when he was sentenced on the basis of being guilty of both arsons.

[27] It should be noted that Client S's son also maintains (in his letter of 10 October) that "When I talked to Lawyer J on the phone he did not tell me of the bad consequences for taking responsibility for something I didn't do, he only told me the good reasons for accepting the offer". Lawyer J was obliged to ensure that Client S's son made an informed decision in respect of the offer (Rules of Professional Conduct for Barristers and Solicitors rule 10.05). The Rules of Professional Conduct also provide in rule 10.06 that where a client is to plead guilty, although they maintain their innocence, the lawyer should continue to act:

> only after warning the client of the consequences and advising the client that counsel can act after the entry of the plea only on the basis that the offence has been admitted and put forward factors in mitigation.

Strictly speaking the events of 10 July did not involve a guilty plea - that had been entered earlier on 2 May. However, the effect was that if the proposal was accepted Client S's son would be being sentenced in respect of a matter on which he maintained his innocence. In that regard the provisions of r 10.06 were relevant. I note that Client S in her submissions referred to parallel provisions in the new Rules of Conduct and Client Care for Lawyers, but that the matters under consideration occurred before those rules came into force on 1 August 2008. Therefore the applicable standards are those found in the earlier Rules of Professional Conduct for Barristers and Solicitors.

[28] Lawyer J has maintained that "it was apparent that Client S's son understood all the issues in the case and had weighed up his options". It can also be noted that in an

email sent on 14 July 2008 (but dated 12 July 2008) Client S notes that “we adjourned “to talk about risks” on 10 July.

[29] Lawyer J maintains that he made it clear to Client S’s son on several occasions that it is not possible to plead guilty and then be sentenced on the basis that the accused is innocent. He also states that he explained to Client S’s son that if a guilty plea is entered the system treats you as guilty. He states that this is why he told Client S’s son not to assert his innocence in dealing with the Probation Officer.

[30] This is supported to some extent by Client S’s son who confirms that that he was advised by Lawyer J not to maintain his innocence with the probation officer who was preparing the pre-sentence report. This was appropriate advice (which was repeated in an email from Lawyer J to Client S of 11 July). It would have been unhelpful for Client S’s son to have, having plead guilty, sought to maintain his innocence at the sentencing stage. It also suggests that Lawyer J did, at least to some degree, outline the fact that having affirmed his guilty plea Client S’s son was now obliged to accept his guilt in his dealings with the court.

[31] While the exact framing of the advice is unclear, I am satisfied that Lawyer J did advise Client S’s son that in maintaining his guilty plea it would not be possible to raise facts inconsistent with guilt in sentencing. I am satisfied that Lawyer J acted appropriately in advising Client S’s son and taking his instructions on 10 July in relation to the withdrawal of the application to vacate the guilty plea.

[32] A further issue is whether Lawyer J acted properly in advising Client S’s son by telephone or whether he brought undue pressure to bear on Client S’s son in respect of the withdrawal of the application vacate the guilty plea. Lawyer J denies that he put any undue pressure on Client S’s son. It is important to note that Lawyer J was professionally obliged to exercise independent judgement on Client S’s son’s behalf and to give objective advice. It appears that his advice was that the proposal was one which in all the circumstances should be accepted. Client S’s son took that advice. That advice may have been provided forcefully. It may also be the case that Client S’s son, being in custody, felt pressured to accept the proposal, as it appeared the only way to get out of custody more or less immediately.

[33] I have read carefully Client S’s son’s account of this series of events which he wrote in support of the Law Society complaint and is dated 10 October 2008. I place considerable weight on it. While he maintains his innocence in that letter and indicates that his motive in accepting the proposal was that “it was the best way of getting out of

jail and staying out" there is no suggestion in that letter that Lawyer J put any inappropriate pressure on him to withdraw the application to vacate the guilty plea.

[34] I also note that Client S's son had received advice in respect of his guilty plea from Counsel A. The nature of that advice is contained in a letter from Counsel A to Client S's son dated 5 May 2008. It is unlikely that Client S's son was unaware of the consequences of a guilty plea being entered.

[35] I am satisfied that Lawyer J acted properly and did not place undue pressure on Client S's son in respect of the decision to withdraw the application to vacate the guilty plea.

[36] An associated complaint is that at sentencing Justice Harrison sentenced Client S's son on the basis of the police summary of facts. The three aspects of that summary are particularly objected to. They are the allegation that Client S's son was drinking; the allegation that Client S's son drove a group to the portaloo where he lit a fire with a co-offender; and the allegation that he then drove to a park where he lit a fire with his co-offender. Client S points out that facts can be contested on sentencing. It also appears that Client S's son was surprised by the summary of facts when it was read out in court.

[37] It would have been preferable had Client S's son been aware that the summary of facts would (in the absence of other arrangements) form the basis for sentencing. However, it bears noting that, other than the allegation that he had been drinking, the summary of facts was substantially what had been pleaded guilty to. It would have been inappropriate at sentencing to seek to establish facts which were inconsistent with a guilty plea. In respect of the assertion that Client S's son had been drinking, it can be noted that the pre-sentence report from the Probation Services states that drink was not a factor in the offending.

[38] It is not unusual for the summary of facts to form the basis of sentencing. It is often considered strategically better to focus on mitigating factors in sentencing than on contesting facts which might, in the overall scheme of the matter, not be significant. It appears that this is the course which Lawyer J took.

[39] The conduct of Lawyer J might, with the benefit of hindsight, have been different in respect of sentencing. In particular it appears that Client S's son did not fully appreciate the basis upon which sentencing was to proceed. It would also have been better had Lawyer J clearly explained why in his view the preferable course was not to

contest the allegations in the summary of facts. However, these are comments made with the benefit of hindsight and it is clear that these are criticisms of a relatively minor nature. There is no suggestion that this conduct was of such a degree or of such gravity to the imposition of sanctions for a breach of professional standards.

[40] A further strand of the complaint arises due to the fact that Client S's son is now facing civil liability in respect of the actions he pleaded guilty to. Client S maintains that Lawyer J should have discussed this possibility prior to the decision to abandon the application to vacate the guilty plea. This is not what is contemplated by rules 10.05 and 10.06 of the Rules of Professional Conduct. While it may have been useful for Lawyer J to traverse such issues, any failure to do so does not amount to a professional breach. His retainer related to criminal matters and it is not appropriate to expect him to also give advice on a possible civil claim.

[41] For completeness it should be noted that concern has been expressed by Client S and by her son that Justice Harrison sentenced on the basis of an erroneous calculation. In particular it appears that Justice Harrison suggested that 9 months home detention was an appropriate sentence, but that a discount should be allowed for time spent in custody at the rate of 2 months discount for one month spent in custody. The suggestion is given this the final sentence should have been 4 months home detention rather than 6 (given the amount of time spent in custody and on e-bail). The allegation is that in light of this Lawyer J should have subsequently brought this alleged error to the attention of the Court, perhaps by way of appeal and / or that he brushed off an enquiry made by Client S's son in this regard.

[42] If there was a genuine error in sentencing the proper avenue for redress is of course an appeal. The sentencing notes of the judge traverse these matters but do not do so in a strictly arithmetical manner. Rather he outlines them as matters he took into consideration in reaching his final sentence. It would of course have been open to Client S's son to appeal the sentence on this basis. Client S's son enquired of Lawyer J about this by email on 27 August. Lawyer J responded to it by email on 1 September. Lawyer J suggested that the outcome was a good one and noted that sentencing was not a mathematical exercise. It does seem that by this point the relationship between Client S and Lawyer J had broken down somewhat. It can also be noted that strictly speaking Lawyer J's retainer was at an end. These matters may explain what might have appeared a somewhat brief response to the enquiry relating to the sentence. However, the tone of Lawyer J's email is pleasant and he dealt with the enquiry Client

S's son raised. I am satisfied that the conduct complained of in this regard was not in breach of professional standards.

The meeting of 5 August

[43] Client S also complains that at a meeting of 5 August Lawyer J was discourteous to her. The meeting was convened to discuss Client S's son's forthcoming sentencing and a number of family members were there including Client S's son and Client S's sister. It appears that this meeting was in part precipitated by ongoing correspondence between Client S and Lawyer J. From that correspondence it is clear that Client S was not happy that her son was about to be sentenced on both counts of arson. Her view appears to have been that her son should have maintained his application to vacate the earlier guilty plea.

[44] Client S's son, in his letter of 10 October corroborates his mother's version of events. Of course given the close relationship this is to be expected to a degree.

[45] Lawyer J in his response to the complaint of 1 October accepts that he spoke "bluntly" and notes that he did not intend to humiliate Client S. He apologies if this occurred.

[46] It appears that when this meeting was called feelings were running high. It is also apparent from an email of 14 July 2008 (but dated 12 July) from Client S to Lawyer J that Client S regretted her son's decision to plead guilty. It appears that Lawyer J was concerned with Client S failure to accept her son's decision to plead guilty – a decision he considered to be a wise one. There was undoubted a vigorous exchange. If Client S's version of events is accurate (and I do not make a specific finding in that regard) it would appear that Lawyer J acted in a rather forceful manner. However, it does not appear, even on Client S's version of events, that he was discourteous or rude to such an extent as to warrant any disciplinary sanction. It is not the role of professional discipline to require lawyers to act pleasantly. Meetings concerning matters of importance are often heated and robust exchange sometimes becomes inappropriately personal. That is unfortunate. However, it is important to put the matter in perspective and ensure that parties (including lawyers) do not feel that they need to tiptoe around matters.

Costs

[47] Client S paid over $19 000.00 in fees for Lawyer J's services (and associated costs). Lawyer J was not prepared to undertake this work on legal aid. This is a position he was entitled to take.

[48] Client S complains that she agreed to pay those costs on the basis that an application to vacate the guilty plea and to obtain e-bail was brought. She complains that the application for e-bail was brought on the wrong day and that the application to vacate the guilty plea was not brought at all.

[49] It does appear that there was some communication breakdown in respect of the e-bail application and that ideally Lawyer J (or his office) might have informed Client S of the fact that the application was not going to proceed sooner. That, however, is not a matter of professional conduct under the applicable Rules of Professional Conduct for Barristers and Solicitors. The reasons for the matter not proceeding appear to have been due to Court scheduling and not the fault of Lawyer J.

[50] As regards the fees paid for the application to vacate the plea, it is clear that substantial work was undertaken in respect of that application and that Lawyer J attended Court prepared to argue the matter on 10 July. It was not open to Client S to retain Lawyer J on the basis that he act for Client S's son only on her instructions. A necessary implied term of the arrangement was the Lawyer J was entitled to advise Client S's son as to what, in his professional judgement was the best course of action, and to act on the instructions of Client S's son. While it was anticipated that an application to vacate the plea would be made and heard this did not eventuate. Rather at the commencement of the hearing of the application to vacate the case took an unexpected turn. Lawyer J was entitled to charge for the preparation for and conduct of that hearing on a normal professional basis.

[51] Client S's son continued to instruct Lawyer J in respect of the sentencing and Client S appeared to agree with this. It is implicit from the continued communications between Client S, Client S's son, and Lawyer J that all parties considered the retainer still on foot. Indeed in an email of 14 July 2008 (but dated 12 July) Client S in observing her financial hardship noted to Lawyer J that she did not "begrudge your fees". It was therefore open for Lawyer J to bill Client S for his professional services even though circumstances had changed and the work being undertaken was not that contemplated at the outset of the retainer.

[52] It may also be observed that the substance of the work of Lawyer J and his office was of a high quality. Justice Harrison in his sentencing notes states that he had the

benefit of “an extremely compelling submission both written and oral from Lawyer J”. I have also seen Lawyer J’s file and the application, submissions, and affidavits prepared in respect of the application to vacate the guilty plea. These were of a high quality.

[53] In respect of the size of the bill, it can be observed that $19 000.00 is a significant amount. It is also a sum which caused Client S considerable financial strain in meeting. However, it should also be noted that the work undertaken by Lawyer J and his firm was significant and in some parts undertaken under urgency. It was obviously of considerable importance to Client S and Client S’s son.

[54] The question for determination in respect of the fees is whether the fees charged by Lawyer J were so excessive as to amount to misconduct in respect of which discipline might properly follow. While the amount would appear to be at the upper end for services of this nature, it is not so great as to amount to a professional breach.

Overview

[55] Client S is extremely disappointed with the outcome of the proceedings in respect of the arson charges against her son Client S’s son. Some of her dissatisfaction arises from parts of the justice and corrections system. However she also considers that Lawyer J is also in part to blame for this outcome and is of the view that Lawyer J acted unprofessionally in his conduct of the proceedings. At root she claims that Lawyer J did not act in the best interests of Client S’s son throughout. It is certainly the case that the outcome was one which in her view was not in the best interests of Client S’s son.

[56] I am satisfied that Lawyer J acted professionally in this matter and that he exercised his professional skill and judgement exclusively in the interests of Client S’s son. The predicament that Client S’s son found himself in and the urgency under which he was expected to make decisions were not or Lawyer J’s making and the advice he gave to Client S’s son was adequate.

Decision

[57] The complaint is dismissed.

[58] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act the determination of the Auckland Standards Committee 1 in this matter is modified and the words:

> We advise that on 24 October 2008 Standards Committee 1 resolved pursuant to section 138(1)(d), (e) and (f) of the Lawyers and Conveyancers Act 2006 (the Act) to take no further action.

are replaced with the following determination:

> On both inquiring into the complaint and conducting a hearing on the papers with regard to the complaint it is determined that no further action will be taken with regard to the complaint. This determination is made pursuant to s 152(2)(c) of the Lawyers and Conveyancers Act 2006.

DATED this 13th day of February 2009

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Duncan Webb
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:

> Client S as Applicant
> Lawyer J as Respondent
> The Auckland Standards Committee 1
> The New Zealand Law Society
> The partnership of Firm B as a related entity which was entitled to apply for a review.