

**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 4

**BETWEEN**

**IQ**  
of Auckland

Applicant

**AND**

**SG**  
of Auckland

Respondent

**DECISION**

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

[1] This is an application for review of a decision of the Auckland Standards Committee 4 which considered a complaint from IQ (the Applicant) against her former solicitor SG (the Practitioner). The Standards Committee declined to uphold the complaint and the Applicant seeks a review of that decision.

**Background**

[2] The Applicant's daughter married a man in 2002. Prior to the marriage a prenuptial agreement was signed which recorded among other issues that a house purchased from the Applicant by her new son in law in 2000 was to be the separate property of her daughter if the parties separated. The property was legally transferred to the daughter prior to the couple becoming engaged. The marriage lasted 15 months, and within two weeks of the separation the Applicant's daughter transferred the

house's title back to the Applicant for \$400,000.00. The former son in law's parents had loaned him \$200,000.00 to help finance the purchase of the property.

[3] About three years later the former son in law registered a claim over the property, and shortly thereafter he issued proceedings under the Property (Relationships) Act 1976 seeking to set aside the prenuptial agreement and the sale of the property by the Applicant's daughter to the Applicant on the basis that it was a transaction intended to defeat his interests in relationship property. The Applicant was named as Second Respondent in the Family Court proceedings and was represented by the Practitioner. (Her daughter as First Respondent was separately represented.) The claim was heard in a two day hearing in the Family Court in January 2009.

[4] The Practitioner rendered two accounts to the Applicant during the period between taking her initial instructions in May 2008 and 31 July 2008. The first account dated 30 June 2008 was for \$11,159.63 including GST and disbursements, and the second invoice dated 31 July 2008 was in the sum of \$2,039.29 including GST and disbursements. A third invoice for \$24,618.72 covered attendances and legal work from 1 August 2008 up to and including the successful defence of the claim against the Applicant.

[5] In April 2009 the former son in law appealed the Family Court decision to the High Court. The appeal was defended by both the Applicant and her daughter. When the matter was called for hearing on 10 November 2009 it was adjourned until the next day for reasons relating to the judge, with the appeal hearing then taking place. On 9 December 2009 the High Court Judge dismissed the appeal.

[6] The Practitioner rendered a further account to the Applicant on 30 June 2009, this invoice covering the period 17 April 2009 (when the appeal was lodged) to 30 June 2009. It totalled \$9,135.01 including GST and disbursements. The Practitioner's final bill of costs in the sum of \$12,262.51 including GST and disbursements was rendered on 16 November 2009, a few days after the High Court hearing.

[7] In her complaint to the New Zealand Law Society (NZLS) of 29 March 2010 the Applicant claimed that she had been overcharged by the Practitioner and sought the return of "money plus interest". She was also unhappy about aspects of the Practitioner's response to her enquiry about the costs and her request for timesheets. Her final complaint was that she had been sent a copy of the High Court judgment without it containing both the signature of the Judge and the Court's formal seal.

[8] The Practitioner informed the NZLS that the Applicant paid the first four invoices detailed above, but declined to pay the final invoice of \$12,262.51. He forwarded copies of the disputed invoices, their related timesheets, the full Family Court and High Court judgments, and copies of correspondence and emails passing between the parties during the period of the Practitioner's retainer. He also provided a detailed background to the proceeding, his attendances, research and other associated legal work undertaken for the Applicant during the period covered by each invoice.

[9] The Practitioner added that the Applicant had impressed upon him that she had to win the case as much rested on the outcome; that the outcome was of considerable importance to his client and that she had pressed on him "on many occasions that we needed to get the right result." He explained that the fundamental issue in the proceedings was legally challenging because while there were cases on it, none were factually similar. The proceedings included a dispute over the true value of the property. There were also costs for interpreters. He also addressed a number of other issues including a denial that he had ever provided the Applicant a fixed estimate for the conduct of the appeal, enclosing a copy of a letter in which he had required a retainer on account of costs and disbursements. The Practitioner further explained that the work involved in the file was comprehensive (covering preparation and drafting of submissions for the Family Court hearing and the subsequent Appeal) and resulted in a successful outcome for the Applicant at all stages.

[10] The Practitioner stated that after rendering his final bill of costs he understood that the Applicant wanted a detailed timesheet relating to the final bill and he supplied it. When it was clarified that she wanted timesheets for all invoices the Practitioner said he provided them to her on 19 March 2010, which was ten days before she filed her complaint.

[11] Regarding the High Court judgment, the Practitioner said that on the day following his receipt of it the Court's judgment (which he said was unsealed and unsigned judgment) he had sent it on to his client. He said that the Applicant had not asked for a signed copy of the judgment, and had she done so he would have been sent to her. He said that in a subsequent email the Applicant had requested that he undertake no further work on her file.

[12] The NZLS appointed a costs assessor who was instructed to undertake an assessment of the disputed bills of costs. The letter of instruction noted the criteria to be applied to assessing the costs for the different periods of time covered by the

invoices, which had been rendered both before and after the 1 August 2008 (the date when the new Lawyers and Conveyancers Act 2006 (the Act) came into force).

[13] The cost assessor's comprehensive report dated 19 October 2010 set out in detail his conclusion that the bills of costs and the total fee charged for the work undertaken in both Courts represented a fair and reasonable fee for the services provided.

[14] With regard to the two bills rendered prior to 1 August 2008 the cost assessor set out the relevant law (Section 351(1) of the Lawyers and Conveyancers Act 2006) and applied the relevant criteria to the invoices and their detailed time records.

[15] With regard to the invoices rendered after 1 August 2008 he set out the criteria under Rule 9 of the Lawyers: Conduct and Client Care Rules and referred to an earlier determination from this office (LCRO 167/2009) which discussed the relevant criteria which applied to assessing fees for bills of costs rendered after 1 August 2008.

[16] The cost assessor's conclusions were explained in detail against the factors that had been considered in undertaking the assessment, and it is not necessary to restate the assessor's analysis or conclusions here.

[17] The assessor's report was referred to the parties for their comment. The Applicant was unhappy with the assessor's conclusion and sought the appointment of another assessor to the case. Her comments did not focus on the particulars of the cost assessor's conclusions but rather repeated the detail of her original complaint.

[18] The Practitioner accepted the assessment and opposed the appointment of a second assessor.

### **Standards Committee Determination**

[19] The Standards Committee's decision included a detailed of the background, identified the issues, the positions of the parties, and set out in considerable detail the cost assessor's discussion on each invoice.

[20] The Committee noted that it was ultimately its role to assess the reasonableness of fees, and that the "cost assessor's report (was) but one part of the matters which the Committee must consider in its deliberation...". The Committee declined to appoint another costs assessor.

[21] The Committee considered the different invoices in terms of the applicable factors. With regard to the invoices predating 1 August 2008, the Committee saw no evidence of gross or dishonest overcharging, concluded that the threshold of section 351 was not met, and declined jurisdiction to consider these bills further.

[22] Regarding the post 1 August 2008 invoices, the Committee considered that the fees charged were fair and reasonable in relation to the work undertaken, and noted that the Practitioner had provided comprehensive timesheets setting out the time expended and the work undertaken. Accordingly the Committee resolved to take no further action pursuant to Section 138 (2) of the Act.

[23] Regarding the complaint about the unsigned and unsealed High Court judgment, the Committee concluded that “sending a copy of the order so promptly to keep the client informed, was appropriate. Sending a copy of an unsigned undated order did not amount to a breach of duty”. It went on to find that the Practitioner’s “standard of professionalism in dealing with the situation was appropriate both ‘before and after’ instructions were terminated by the client. The Committee could find nothing to substantiate the claim that his conduct was unprofessional”.

### **Application for Review**

[24] The Applicant sought a review of the Standards Committee decision, and a “refund [of] the over-charged legal fee to me”. The Practitioner’s response to the review application was to provide a further summary of the proceedings and to indicate he would rely upon the information he had previously submitted to the Committee.

[25] This review has been conducted “on the papers” in accordance with section 209 of the Lawyers and Conveyancers Act 2006, with the consent of both parties.

[26] It is the task of this office to review decisions of Standard Committees. The review includes consideration of how the Standards Committee dealt with the complaint and whether its decision is soundly based on the evidence before the Committee. Because this process is confined to a review, there is no jurisdiction to consider any matters that have not previously been considered and decided by a Standards Committee.

[27] For this reason I do not intend to comment on any new complaints about the Practitioner’s hourly rate and the gap between costs award in her favour by the Court, and the actual costs charged by the Practitioner. The Applicant had not previously complained about the Practitioner’s hourly rate, and in any event this is a matter that

would have been considered by the costs assessor. The second complaint is misconceived; in the majority of cases where a party to litigation is successful and “costs” are awarded in their favour, those costs orders are much lower than the actual costs incurred.

## **Discussion**

[28] *Supply of timesheets.* The complaint was that the Practitioner had failed to provide detailed timesheets for the Applicant’s “whole case” on 16 December 2009 but had only received the timesheet relating to the last bill of costs.

[29] The issue of the timesheets does not seem to have been specifically considered by the Standards Committee (which may reflect that it was not perceived as a serious issue). Lawyers do not usually supply a print out of a detailed time record unless specifically asked and the evidence indicates that there was a misunderstanding on the Practitioner’s part about the information sought. However, as soon as the Practitioner understood the scope of the request he then provided the information sought by the Applicant. I can find no reasonable basis for a disciplinary finding against the Practitioner in relation to this matter.

[30] *Complaint of overcharging:* This was the main complaint. The review issue is whether the Standards Committee decision to take no further action was correct.

[31] The Applicant was dissatisfied that the Standards Committee had relied only to the fee factors referred to. She considered that the extension for the court hearing was a “tactic” on the Practitioner’s part to charge more fees, that time sheets had been inflated during the time lapse in providing them, and there had been no examination of hourly rates.

[32] The Standards Committee appointed a costs assessor, and in my view this was an appropriate step to take. It is also clear that the Committee independently considered the complaint alleging overcharging, and did not simply accept the assessor’s report.

[33] The assessor’s report was detailed and comprehensive, and addressed all relevant factors. The Committee took account of that report in its independent consideration of the complaint. The Applicant’s concerns about the Practitioner’s charges were known by the assessor and had there been evidence of unnecessary attendances these would have been identified by the assessor. He provided a detailed report and each of the parties were offered the opportunity to comment, those

comments having then been considered by the Committee. I can find no fault with the processes employed by the Committee, or the final conclusions it reached. No disciplinary issues arise in this matter.

[34] That the High Court judgment sent to the Applicant did not contain seal or judicial signature has been considered and appropriately dealt with by the Standards Committee. It raises no disciplinary issues.

[35] Having considered all of the information contained in the Standards Committee file, and that provided for the review, it is my view that the Standards Committee dealt appropriately with the complaint, and there is no reason for disturbing its conclusion that there are no disciplinary issues involved. The review application is declined.

### **Decision**

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

**DATED** this 2<sup>nd</sup> day of March 2012

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Hanneke Bouchier  
**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:

IQ as the Applicant  
SG as the Respondent  
Auckland Standards Committee 4  
The New Zealand Law Society