LCRO 60/2011

CONCERNING An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING a determination of the Waikato Bay of Plenty Standards Committee 2

BETWEEN **MR AND MRS ID**

Of [North Island]

Applicant

AND **MR SR**

of [North Island]

Respondent

DECISION

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

[1] Mr and Mrs ID (the Applicants) sought a review of a Standards Committee decision that declined to uphold their complaints against Mr SR (the Practitioner).

[2] The complaints concerned the quantum of fees charged by the Practitioner in relation to the sale of one property and the purchase of another. The Applicants considered that the fees charged by the Practitioner were excessive.

[3] The reasons given by the Standards Committee for declining to uphold the complaints was that each of the invoices related to separate transactions, and separately, neither of them reached the threshold of $2,000.00 for a complaint to be considered.

[4] Where a bill of costs is below $2,000.00, the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, by Section 29, prohibits a Standards Committee dealing with the complaint unless “there are special circumstances that would justify otherwise”. The Standards Committee did not consider there were such circumstances existed in this matter. In these circumstances the Standards Committee

concluded that it had no jurisdiction in the matter. The Committee further noted that experienced members of the Committee did not consider that the costs as rendered appeared to be excessive in any way.

[5] The Applicants challenged this decision. They contended that the Committee had ignored their response to the Committee, challenging the information provided by the Practitioner. The Applicants wrote, "The Committee have ignored the fact that (the Practitioner) stated that his fees were average. Please see attached proof that his charges were 75% above other firms." They asked that the fees be adjusted to the 'indication' given to them. I understood that this referred to their evidence that the Practitioner had told them the fees were 'average'.

[6] A review hearing was held on 1 December 2011, attended by the Practitioner in person, and the Applicants by telephone connection from [North Island].

Considerations

[7] The Committee had declined jurisdiction on the basis that each invoice was less than $2,000. I put it to the Applicants that the transactions appeared to involve separate transactions, and had been invoiced separately, and it therefore appeared that the Standards Committee was correct in viewing the two invoices as separate bills of costs, neither of which reached the required threshold. After some discussion the Applicants conceded that this was probably correct.

[8] However, the prohibition to consider the complaint, as stated in section 9 (referred to above), does not arise if "there are special circumstances that would justify otherwise". The next enquiry was therefore whether there were any 'special circumstances' in this case that justified the Committee considering the matter notwithstanding the level of the invoices.

[9] The Applicants thought that there were special circumstances. They particularly relied on an agreement to pay 'average' fees. Their understanding of what 'average' charges were for conveyancing work was based on information they had gathered from other law firms about what those firms would have charged for that work. They had explained to the Standards Committee that despite their request the Practitioner had not given them fees information but had told him that his fees were "average".

[10] The Practitioner had charged a fee of $1,040.00 for the sale of their property in [North Island], and a fee of $1,280.00 for the purchase of another property in [North Island]. When the Applicants initially complained about the fees the Practitioner reduced the bill by $500.00 in an endeavour, as he informed the Standards Committee, to resolve their dissatisfaction.

[11] The Applicants appeared to have been dismayed when receiving the Practitioner's bills, after which time they made enquiries of other law firms and had been given a range of fees between $700.00 and $800.00. They compared the Practitioner's charges to that information.

[12] As noted the Standards Committee observed the fees were within an acceptable range. The Applicants rely on telephone information provided by other law firms about their conveyancing charges as evidence of the Practitioner having overcharged them. In the context of their complaint and review application I have considered whether the comparative information they provided constituted "special circumstances" justifying a review of the fees.

[13] Section 29 prohibits jurisdiction in relation to fees complaint if the fee is below $2,000.00. It is clear that the prohibition rests on the quantum of the fee, and in these circumstances a grievance about the quantum of fees *per se* could not constitute 'special circumstances' for the purposes of overcoming the jurisdictional barrier. The legislative provision suggests that there needs to be circumstances *other than* the quantum before a bill could be revised.

[14] Examples of 'special circumstances' might arise where a Practitioner had undertaken no work at all for the fees invoiced, or where the charges exceeded a quote for work or exceeded an estimate by an excessive amount. This is not the case here; the Applicants rely on information about 'average' fees charged by other lawyers.

[15] The matter of what amounts to a fair fee is not an exact science, and may fall within a range of fees acceptable for the kind of work that is undertaken, also taking into account the range of factors dictated by Rule 9 of the Rules of Client Care. Information obtained from other law firms by way of a telephone enquiry cannot be considered a reliable indicator as there may be additional aspects to the work that would not normally arise in a straight forward conveyance.

[16] The Applicants are nevertheless of the view that both of the transactions were straight forward. I do not agree insofar as the sale involved an auction, required inspection and approval of the auction documents, and after the auction failed to sell the property and the Applicants then obtaining a private offer to purchase, they instructed the Practitioner to prepare a Sale and Purchase Agreement. The Practitioner also had to provide advice to the Applicants on the issue of whether any commission was payable. It also appears that the negotiations and amendments to that agreement were dealt with by the Practitioner who also handled receipt of the deposit. These attendances were included in the overall fee of $1,440 Overall this was not a 'straight forward' transaction.

[17] The purchase involved standard attendances and the original fee was reduced by $500 to $840. The Standards Committee members who are experienced in conveyancing did not consider that the fees were excessive. At the review hearing in the course of discussions concerning the fees, I informed the parties I could see no basis for challenging the Committee's observations about the fees.

[18] Materially, there is nothing in any of this information that would constitute "special circumstances" such as to raise jurisdiction. I informed the parties at the review hearing of the outcome of my review, that there was basis for reviewing the invoices.

[19] I did not expect any further comment but after the review hearing the Applicants sent an email to my office, expressing their dissatisfaction with the review hearing which they did not see as fair. They wrote that the "*meeting was not an inquisitional style and was conducted in the same manner as Disputes Tribunal hearing*."

[20] The LCRO Guidelines explain the procedures of our office and state that the review hearing is inquisitorial. This simply means that the LCRO can ask questions of the parties directly, and in the course of the hearing I directed various questions to both parties.

[21] The Applicants further wrote that the Practitioner "was allowed to volunteer information that they were not allowed to see"; they questioned the Practitioner's conduct at the hearing and his integrity, and queried whether I had taken into account their information about average fees.

[22] In the circumstances I did not forward the email to the Practitioner, but I have considered the Applicants' comments but do not agree. The additional information provided by the Practitioner at the review hearing were examples of other invoices he had sent to other clients for similar or equivalent work, as evidence of the standardised charged of his firm. These were described to the Applicants in the course of the hearing. However, this evidence was immaterial to my considerations. The Practitioner responded frankly to my questions, and the Applicants were also helpful in the evidence they provided.

[23] My impression is that the Applicants' dissatisfaction ultimately arises from their failure to comprehend why the fees information from other law firms concerning average charges was not relevant. The short answer is that the invoices were each below the $2,000 threshold and therefore fell outside of the Committee's jurisdiction. Therefore the question of reasonableness did not arise, unless "special circumstances" existed. That other firms may charge differently is not a "special circumstance".

[24] Matters may have become confused when the Standards Committee nevertheless proffered a view as to the reasonableness of the fee, and this may have led the Applicants to perceive that information about charges by other firms was relevant. However, that information was not relevant to the complaint, and nor was it relevant to my review. For reasons above that information does not constitute "special circumstances" for the purpose of section 29.

Further issue- Letter of Engagement

[25] Given the nature of the complaints, and the absence of information to the clients, it is surprising that the Standards Committee failed to give any consideration to the question of what client care information was given to the Applicants by the Practitioner. This is pertinent because the events complained of occurred after the commencement of the Lawyers and Conveyancers Act 2006 which imposed obligations on all lawyers to provide certain information to their clients.

[26] Rule 2.3 of the Rules of Conduct and Client Care requires a lawyer to provide information to clients about the principle aspects of work to be done, the basis on which the fees will be charged, and if an enquiry is made by a client, to provide the client with a fees estimate.

[27] The Practitioner was asked about what information he provided to the Applicants. He replied that it was his general practices to hand to clients a standard form letter, and he thought he had given such information to the Applicants. They denied having received any such information. There is no record about this in the relevant files.

[28] On questioning the Practitioner, and his general practices, further, I considered it more likely than not that the Practitioner had not provided to the Applicants the requisite information in relation to the conveyancing work. Had he done so, it is unlikely that the complaint would have arisen, or in any event would have provided a complete answer for the Practitioner.

[29] The Practitioner is a very senior lawyer, and most of his professional life had not required compliance with the statutory requirements introduced in 2008 concerning client care information. However, the new regulatory regime was widely published and unfamiliarity does not excuse or absolve the Practitioner from responsibility to comply with the Rules of Conduct and Client Care which have been in operation for more than three years.

[30] The Lawyers and Conveyancers Act provides for a finding against a Practitioner of "unsatisfactory conduct" where there is evidence that a lawyer has failed to comply with his obligations. I had some reservations about whether the Practitioner has fully taken on board his statutory obligations and the review hearing provided an opportunity for some discussion surrounding the Rules and the professional obligations of lawyers.

[31] The Practitioner was asked to forward to my office the document that he sends out as his standard letter of engagement which he has since done. The Practitioner has given assurances that he will ensure that his practice will comply with his professional obligation and ensure that the procedures of his office will be more focused on compliance. After that discussion I am confident that he will now ensure that his file records that service information that needs to be sent to clients has in fact been sent.

[32] In considering whether an adverse finding should be made, I have taken into account the assurances of the Practitioner, and the fact that there can be no material advantage or loss to the Applicants by reason of any particular disciplinary outcome. Section 138(2) of the Lawyers and Conveyancers Act includes a discretionary provision to take no further action where, having regard to all of the circumstances of the case, further action is unnecessary in inappropriate.

[33] Having taken all matters into account I do not consider it necessary or appropriate to take any further action in respect of the matter.

Decision

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

DATED this 22nd day of December 2011

____

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:

Mr and Mrs ID as the Applicants
Mr SR as the Respondent
The Waikato Bay of Plenty Standards Committee 2
The New Zealand Law Society