

**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 3

**BETWEEN**

**IG**  
of Auckland

**AND**

**QV**  
of Auckland

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

**DECISION**

**Introduction**

[1] The Standards Committee had declined to uphold a complaint made by Ms IG (the Applicant) against Mr QV (the Practitioner).

[2] The Practitioner is a barrister, and on the instructions of an instructing solicitor, he had acted for the Applicant in relation to a caveat, charging a fee of \$10,000.00 which was paid by the Applicant.

[3] In relation to a subsequent, but related, proceeding, the Practitioner had given the Applicant an estimate of \$19,800.00, based on three days preparation and two days trial.

[4] The instructing solicitor (on behalf of his client, the Applicant) had responded that this was "*way too high for the client*", noting that the Practitioner had already undertaken the caveat proceeding and that he ought by now to be familiar with the case as the client had introduced no new evidence. The instructing solicitor added

that, “*As such the further time required should be to refresh your memory and time attendance in Court for the hearing itself.*”

[5] Thereafter the Practitioner sent a tax invoice which read;

“To my fee in relation to the preparation and conduct of the above proceeding (including trial) (including GST) (as agreed).       \$12,000.00

This invoice is payable on or before 28 May 2010”

[6] The sum of \$12,000.00 was paid directly by the Applicant into the personal account of the Practitioner. This was at variance with the prior payments made by the Applicant which were made into the trust account of her instructing solicitor.

[7] The proceeding did not get to Court because the matter was settled. Thereafter the Applicant sought a refund of a portion of the fees that she had paid. The Practitioner’s refusal to give her a refund led to her complaining to the New Zealand Law Society.

[8] The Standards Committee focused its considerations on the question of the fairness of the Practitioner’s fee. The Committee considered that the Practitioner had adequately explained the work involved. The Committee noted that the matter had not gone to court, but considered that there was no clear obligation on the Practitioner to reduce his fees pro rata. The Committee noted that “*a large proportion of the proprietary work in the second matter had been done to an advanced stage prior to and in anticipation of the hearing and that if the matter had proceeded to trial there would have likely been a loss to [the Applicant].*” The Committee continued that the costs charged were not inconsistent with the retainer or excessive, noting the difficulty of providing a firm quote or making a clearer apportionment between the preparation and the hearing elements of a matter at an early stage.

#### *Review application*

[9] The Applicant’s review application largely focused on the sum of \$12,000.00 being intended to cover the costs of not only the research but also the trial, which she understood to mean the Practitioner’s presence at the two day trial. This had not happened and she was at a loss to understand why the Standards Committee accepted that the Practitioner should keep the whole fee when he had not attended

court. She also referred to the Scale 2B costs which had allowed for 15.4 hours of the Practitioner's time, which the Applicant valued at \$6,160.

[10] The Applicant also referred to having deposited the money directly into the Practitioner's personal account. She added that if she had deposited it into her instructing lawyer's trust account she would not be in this situation. The Standards Committee did not deal with this aspect of the complaint, although it was clearly a matter before the Committee, noting that among the Standards Committee file was a copy of an email sent by the instructing solicitor to the Applicant referring to "... *our Law Society rule that that prepaid fees must be held in trust until work done so [the Practitioner] ought not to have asked you to pay him direct which is against our rules.*"

*Steps taken in relation to the review*

[11] The parties were directed, by this office, to consider mediation as a means of resolving the matter, but as they could not both agree to participate in mediation, that did not proceed.

[12] At a telephone directions conference held on 7 May 2012 I put it to both parties that the question of whether there had been excessive charging in terms of the preparation time could best be resolved by way of a costs assessment to be done by an independent assessor. The Practitioner supported this proposal, accepting that there was "*a certain amount of overlap*", but that the effort involved in preparation for a trial was not necessarily able to be subjected to the precision of quantification.

[13] The Applicant was less enthusiastic about the appointment of an independent costs assessor. With reference to the tax invoice, she maintained that there was a 'contract' between herself and the Practitioner, the terms of which were as set out in the Practitioner's invoice and provided that the agreed covered the attendances identified by the Practitioner, which included two hearing days in court. As this had not happened, she considered that her contract with the Practitioner entitled her to a refund of a portion of the fee that represented that time.

[14] At the directions conference I put it to the parties that in my view further consideration of the complaint needed to be given by the Standards Committee, and in particular that the question of whether the Practitioner's charges had been excessive, or whether there was any doubling up, could best be resolved with the assistance of an independent costs assessor. The Standards Committee could also then consider whether there were any circumstances that were relevant to a refund being given to the Applicant.

[15] After the teleconference call I received a further email from the Applicant asking that a costs review should also extend to the costs she paid earlier in relation to the caveat matter. This was not on-sent to the Practitioner for the reason that it is outside of the jurisdiction of this to extend any redirection order beyond the complaint that has been received and considered by the Standards Committee. The office of the LCRO is a review body, and the powers are of review only following a determination by a Standards Committee of a complaint. No complaint has been made by the Applicant in relation to any charges other than the fee concerning the second matter dealt with by the Practitioner.

[16] The overall result of the review is that the Standards Committee decision will be vacated, with a redirection order issued.

### **Outcome**

The Standards Committee is vacated.

### **Redirection order pursuant to section 209**

The Standards Committee is direct to appoint a costs assessor to ascertain whether there was any duplication in the fees charged by the Practitioner, and to consider whether there are any circumstances justifying a refund to the Applicant.

**DATED** this 10<sup>th</sup> day of May 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:

IG as the Applicant  
QV as the Respondent  
The Auckland Standards Committee 3  
The New Zealand Law Society