

CONCERNING

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

AND

CONCERNING

a determination of the Standards Committee

BETWEEN

B & M Reading
Of Australia

Applicant

AND

R Bracknell
Of Wellington

Respondent

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

DECISION

Application for review

[1] An application was made by Mr and Mrs Reading for a review of a decision by the Wellington Standards Committee 2 in respect of a complaint against R Bracknell.

[2] The complaint related to fees charged by Mr Bracknell in respect of the complainants' purchase of a property in Tawa, Wellington. The fees were greater than the amount indicated in the Terms of Engagement. Mr Bracknell acted for Mr and Mrs Reading in the transaction.

[3] The Standards Committee considered the information and noted that it could not deal with a complaint in relation to a fee that did not exceed \$2,000 unless there were special circumstances. The Committee did not consider there were any special circumstances in this situation that would justify it dealing with the fees complaint. The Committee decided, pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006, to take no action.

Background

[4] When Mr Bracknell met Mr and Mrs Reading regarding the purchase of a property in Tawa, there was also some discussion about whether a trust should be

formed. Terms of Engagement documentation was prepared which confirmed the instructions concerning the property purchase. Clause 8 of the Terms document recorded a range of \$1,000 to \$1,275 plus GST, disbursements and expenses as the estimated costs to complete the purchase transaction. This fee is explicitly stated to be an estimate, and is clearly shown as the fee only, since other charges are stated as being extra.

[5] The Terms of Engagement also made reference to a proposed trust, stating that costs for creating a trust would be additional to the purchase costs.

[6] When the purchase was completed Mr Bracknell sent a bill of costs to Mr and Mrs Reading in the sum of \$1,990.94. The fees portion of this bill was \$1,650.00. The rest was made up of GST and itemised disbursements. This represented an increase of \$375 over and above the higher range of the fees estimate.

The complaint

[7] Mr and Mrs Reading paid the bill but then complained to the New Zealand Law Society about having been charged a fee that exceeded the amount quoted.

[8] The Standards Committee sent a letter to Mr and Mrs Reading on 18 March 2009 to inform them that the Committee could not deal with any bill of costs that was less than \$2,000 unless there were special circumstances. They were referred to the relevant regulation. Mr and Mrs Reading were invited to provide any further information in relation to any special circumstances that they believed applied in their case.

[9] A further letter sent by the Standards Committee on 30 March referred again to the special circumstances that would be required for the matter to be considered by the Committee, and gave the complainants until 22 April to reply.

[10] The Committee received no response from Mr and Mrs Reading to their letters. On 6 May the Committee considered the matter on the basis of the information before it. This included Mr Bracknell's detailed response, which explained the additional charge. Mr and Mrs Reading had been provided with a copy of Mr Bracknell's letter, and thus had the opportunity to comment, but there is no evidence that they challenged his information. Mr Bracknell's explanation was accepted by the Committee as reasonably justifying the increase.

Bills of cost below \$2,000

[11] The Committee was required to take into account Regulation 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008). This provides that unless the Standards Committee who considers the complaint determined that special circumstances would justify otherwise, the Committee must not deal with the costs complaint if the it relates to a fee that does not exceed \$2,000 exclusive of GST. This is a mandatory provision.

[12] Notwithstanding that Mr and Mrs Reading had not provided any information in respect of the 'special circumstances' requirement, the Committee nevertheless considered whether, in all of the circumstances, there existed any special circumstances that would justify them dealing with the complaint. They concluded that there were no such circumstances, and therefore no basis upon which they could deal with the complaint. As noted, the Committee determined to take no further action pursuant to section 138(2) of the Lawyers and Conveyancers Act.

Reasons for the review

[13] For the review Mr and Mrs Reading provided information about fees that they had paid for other services. This included a legal fee that they had paid for services in relation to the proposed creation of a family trust. They also referred to the fee paid to an accountant (recommended by the lawyer) for tax advice in relation to setting up a trust. They considered that the services relating to the proposed trust and tax advice were intended to be linked to the purchase of the property.

[14] The information they forwarded included copies of correspondence and documents that they considered relevant to the review which was evidence of payments made. They had paid to Bracknell's law firm the sum of \$1,990.90 for the Tawa property purchase transaction, and a further sum of \$542.33 for advice relating to a family trust that they say never eventuated. They had also paid \$450 for advice they received from an accounting firm that had been recommended by the respondent.

[15] Mr and Mrs Reading said that some of the additional legal work *was "directly associated to the settlement"*. This suggested that they considered the bills of costs should be combined for the purpose of their complaint. Together the bills would have crossed the required threshold of \$2,000.

[16] I noted that the accountant's bill is unrelated to the law firm, and could not in any circumstances be accumulated with fees issued by the law firm. It is not obvious that Mr and Mrs Reading were expecting this bill to be included, however, since they referred to 'legal work'. I note that in any event the conveyancing fee, if combined with the fee for trust advice, would have been sufficient to meet the threshold.

[17] I considered the Readings' submissions and the additional information they provided in relation to Regulation 29 which refers to '*... a bill of costs rendered by a lawyer or an incorporated law firm...*' The information provided shows that a bill of costs that is the subject of the complaint was confined to the conveyancing work. The fee for the trusts related advice was invoiced in a separate bill of costs.

[18] The Terms of Engagement in this case included an agreement in respect of the conveyancing instructions. The property purchase was specified and a costs estimate provided.

[19] The Terms also contemplated the possibility of setting up of a trust. The agreement showed that any work in relation to setting up a trust would attract additional fees.

[20] Trusts are a separate and distinct category of legal work. Generally fees estimates would identify and relate to the various areas of services to be provided. This was clearly reflected in the Terms of Engagement in this case.

[21] There may be occasions where a clients' instructions, and the contract of service combines two or more legal services that are otherwise distinct, and which are covered in the Terms of Engagement by a single overall costs estimate or quote. In such a case a bill of costs would likely cover all different service elements. However, that is not the situation here.

[22] In the present circumstances I am unable to see any proper basis for considering these two bills together as one bill of costs for the same transaction.

[23] In my view a bill of costs that is the subject of a costs-related complaint cannot be combined with another unrelated bill for the purpose of combining the fees so as to meet a minimum amount required to meet the Regulation 29 threshold for the purpose of a review. If all the bills related to the same transaction or matter this position may be different. However, that is not the case here.

[24] I do not accept that Mr and Mrs Reading have forwarded a valid basis for disturbing the Committee's decision in this case.

[25] Nor can the fact that Mr and Mrs Reading paid additional fees for other legal services be considered as special circumstances in relation to a complaint about a bill of costs in respect of one of those services.

[26] Having reviewed the evidence before the Committee, and having considered the additional information provided by Mr and Mrs Reading, I am of the view that the application should be declined.

Decision

Pursuant to section 211(1)(b) of the Lawyers and Conveyancers Act 2006 I confirm the decision of the Standards Committee.

DATED this 18th day of July 2009

Hanneke Bouchier
Legal Complaints Review Officer

In accordance with s213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

B & M Reading as Applicants
R Bracknell as Respondent
The Wellington Standards Committee 2
The New Zealand Law Society