

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2021] NZLCRO 085

Ref: LCRO 66/2021

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the [Area] Standards Committee [X]

BETWEEN

OW

Applicant

AND

HP

Respondent

DECISION

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

Introduction

[1] Ms OW has applied for a review of a decision by the [Area] Standards Committee [X] which determined her complaint by concluding that it lacked jurisdiction to consider the fee charged by Mr HP because it was for less than \$2,000.

[2] Ms OW maintains there are special circumstances which open the gateway to consideration of Mr HP's fee.

[3] The gateway provision is reg 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 which says regarding complaints relating to bills of costs:

If a complaint relates to a bill of costs rendered by a lawyer or an incorporated law firm, unless the Standards Committee to which the complaint is referred determines that there are special circumstances that would justify otherwise, the Committee must not deal with the complaint if the bill of costs—

(a) was rendered more than 2 years prior to the date of the complaint; or

(b) relates to a fee that does not exceed \$2,000, exclusive of goods and services tax.

[4] Mr HP's fee was \$1,296.59 exclusive of GST and disbursements. At his hourly rate of \$440, that equates to around 3 hours of time spent on Ms OW's matter. It is clearly a fee that does not exceed \$2,000, exclusive of goods and services tax. In her application for review Ms OW maintains there are special circumstances justifying the Committee dealing with her complaint.

Special Circumstances

[5] Ms OW says the special circumstances are:

(a) She hired one lawyer, not two, but was charged for the attendances of two lawyers.

(b) Ms OW only wanted to instruct Mr HP, specifically because of his claims to specialist knowledge in the type of matter on which she wanted legal advice.

(c) Mr HP's hourly rate, \$440 is "a very high amount for a lawyer" to charge.

(d) Mr HP did not do enough work to justify a fee of \$1,296.59.

[6] Ms OW would like a refund of \$300.

Review on the papers and Strike Out

[7] This review has been undertaken on the papers pursuant to s 206(2) and struck out pursuant to s 205(1)(a) of the Act.

[8] The former section allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties. I record that having carefully read all of the materials available on review, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available I have concluded that the review can be adequately determined in the absence of the parties.

[9] The latter section allows a LCRO to strike out an application for review, in whole or in part, if satisfied that it discloses no reasonable cause of action.

Nature and scope of review

[10] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[11] More recently, the High Court has described a review by this Office in the following way:²

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO’s own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee’s determination.

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

² *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Analysis

Special Circumstances

[12] The Committee outlined one of the regularly accepted tests of special circumstances, briefly that the circumstances are in some way “abnormal, uncommon or out of the ordinary”.

[13] Ms OW says she received services from more than one lawyer and was charged accordingly. There is nothing abnormal, uncommon or out of the ordinary in a client receiving services from more than one lawyer. Furthermore, Mr HP’s terms of engagement referred to other lawyers and foreshadowed the involvement of more than one lawyer.

[14] Ms OW wanted to instruct Mr HP because he claimed expertise in undue influence cases, which was the type of matter on which Ms OW sought legal advice. There is nothing abnormal, uncommon or out of the ordinary in a client seeking or instructing a specialist, receiving advice from a specialist or a specialist working with another lawyer on a client’s matter.

[15] Mr HP’s hourly rate was \$440. That is the rate referred to in his terms of engagement. Whether or not it is “a very high amount for a lawyer” to charge is a subjective observation. Ms OW has not supported her view with any evidence. While \$440 for an hour’s work looks like a big number, it falls a long way short of being abnormally or uncommonly high or out of the ordinary for a lawyer’s hourly rate.

[16] Ms OW says Mr HP did not do enough work to justify a fee of \$1,296.59. Mr HP and his colleague spent an hour with Ms OW. The information she had provided was then considered, and a letter drafted on the basis of that information in the hope that her case might be advanced. That fee is indicative of at least 3 hours of work. While it is always possible that the fee could have been less than \$1,296.59, the fact that the fee is that amount is not a circumstance in itself that makes the amount abnormal, uncommon or out of the ordinary for the service provided.

[17] Having considered all of the materials that are available on review I am left with little alternative but to strike out the whole of Ms OW’s application for review because it

discloses no reasonable cause of action. That leaves the Committee's decision unaffected.

Anonymised publication

[18] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

Decision

Pursuant to s 205(1)(a) of the Lawyers and Conveyancers Act 2006 the application for review is struck out because it discloses no reasonable cause of action.

DATED this 11TH day of JUNE 2021

D Thresher
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:

Ms OW as the Applicant
Mr HP as the Respondent
Mr GD as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society