

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

[2023] NZLCRO 068

Ref: LCRO 106/2022

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

MG

Applicant

AND

WL KC

Respondent

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

Introduction

[1] Ms MG has applied for a review of the determination by [Area] Standards Committee [X] to take no further action on her complaints about Ms WL KC.

Background

[2] Ms WL acted for Ms MG in an acrimonious separation from her former partner, Mr HK.¹ There were two children born of the relationship, giving rise to custody and maintenance issues.

¹ Ms WL was instructed in 2013.

[3] Each party had claims to relationship property and Mr HK pursued a Domestic Actions claim against Ms MG under the Domestic Actions Act 1975.

[4] The various applications to the Court, hearings and judgments involved in the proceedings are documented in the Standards Committee determination.²

[5] During the time that Ms WL acted for Ms MG, she rendered invoices totalling \$115,353.95 (excluding GST and disbursements). Ms MG terminated Ms WL's instructions in February 2018 and instructed new counsel, Mr PV. Mr PV uplifted all files from Ms WL and shortly afterwards, Ms MG and Mr HK settled all matters between them.

Ms MG's complaints³

[6] Ms MG's complaints were made in her personal capacity, as a director of [Company B], and as a trustee of the [M] Family Trust.⁴

[7] It would seem⁵ that, in the main, Ms MG has formed the view that the advice provided, and actions taken, by Ms WL, failed to produce a positive result for her and was directed largely towards enabling Ms WL to maximise the quantum of fees generated. This is evidenced by the following:

All work Ms WL did resulted in escalated unnecessary legal billing, and motive was evidenced as being for self-interest of lawyer;

After client had expended six figure sums on spousal case, client achieved no positive income at all. Lost hundreds of thousands of dollars in this run-a-way lawyers plan, which was self-interest for lawyer, not safe for client. [sic]

[8] Ms MG also complained about various aspects of Ms WL's advice and conduct:⁶

Namely, Ms WL:

- a) lacked competence and failed to achieve anything of value;
- b) caused Ms MG to suffer loss;
- c) failed to keep to agreed pathways and keep copies of critical documents;

² Standards Committee determination (25 May 2022) at [8]–[13].

³ All quotations in this section of the decision are taken from Ms MG's complaints to the Lawyers Complaints Service (12 February 2021).

⁴ The complaints occupy some 70 pages of close typing in something of a 'stream of consciousness' fashion, making them extremely difficult to comprehend and being often repetitive.

⁵ I use this phrase advisedly as it is extremely difficult to discern specific complaints from the considerable volume of material produced by Ms MG, both to the Standards Committee and on review.

⁶ The summary of complaints here includes the terminology used by Ms MG.

- d) failed to provide estimates of costs;
- e) forced Ms MG to enter into relationship property proceedings and appeals;
- f) failed to advise of alternatives to litigation;
- g) failed to follow instructions;
- h) was guilty of providing misleading and deceptive conduct directed only to obtaining financial gains;
- i) acted in breach of r 2.3 of the Conduct and Client Care Rules⁷ by using legal processes for improper purposes;
- j) did not proactively warn Ms MG of risks;
- k) breached other Acts – e.g the Fair Trading Act, Crimes Act;
- l) failed to communicate clearly;
- m) was conflicted and did not advise Ms MG to take independent advice;
- n) failed to investigate fundamental evidence;
- o) failed to put evidence before the Court;
- p) did not act in a timely manner;
- q) billed excessive fees;
- r) failed to make settlement offers;
- s) failed to meet deadlines;
- t) declined, or delayed holding, strategy meetings;
- u) used threats to support coercion tactics;
- v) overpromised outcomes; and
- w) did not provide terms of engagement.

⁷ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) – all references are to the Rules in force at the time.

[9] Ms MG seeks:

- a) Repayment of all fees paid;
- b) Payment of interest;
- c) 'Reparation'; and
- d) Payment of fees paid to other lawyers.

Ms WL's response

[10] Ms WL instructed [Law firm A] (Ms NR/Ms BC) to respond to the complaints on her behalf.⁸

[11] [Law firm A] advised that they have struggled to "discern and address the substance of each alleged breach of the Rules" and provided a "generalised response to the issues" as identified by the Legal Standards Officer.

Failing to act competently, in a timely manner and in accordance with instructions

[12] Ms WL rejects Ms MG's allegations. [Law firm A] noted that "Ms WL acted for Ms MG over a six-year period and in respect of an extensive range of substantive and procedural matters".

[13] They make the point that "no litigation lawyer guarantees success in litigation" and observed that even the most competent counsel does not always succeed in court and submitted that Ms WL achieved a number of notable successes for Ms MG. They said:

The ultimate settlement of the proceedings could only have been reached by the parties achieving their respective bargaining positions in 2017 (i.e. the uncertainty of the matter being sent back to the Family Court after both having achieved some measure of success).

Request to uplift files

[14] [Law firm A] traversed the reasons why Ms WL was unable to comply with Mr PV's request to uplift Ms MG's files for a period of three months and submitted that the time taken was reasonable given the circumstances outlined by them.

⁸ [Law firm A] have continued to act for Ms WL in this review.

Fee estimates

[15] [Law firm A] said:

Given the ongoing and fraught nature of the dispute between Ms MG and Mr HK it was not possible for Ms WL to predict the way in which matters would unfold and the time the dispute would take to resolve. Nor was it possible for Ms WL to provide an estimate for every eventuality. This is a common experience in complex, hard fought litigation.

[16] They state that Ms WL did provide estimates where it was possible and provided evidence.

Reasonableness of fees

[17] [Law firm A] noted that more than two years had elapsed between the date of Ms WL's final invoice (20 December 2017) and the date on which Ms MG made her complaints (February 2021). They referred to advisory material provided by the Law Society which advises that complaints about fees will generally only be considered if the complaints are made within that time frame.⁹

[18] [Law firm A] also submitted that Ms WL's fees were fair and reasonable after taking into account the fee factors set out in r 9.1 of the Rules. They noted that Ms WL made allowances for Ms MG's financial circumstances, and waived payment of her fees until Ms MG's financial circumstances had improved. They estimated the value of discounted fees at \$39,444.

[19] In addition, they advise that in 2017, Ms WL offered to do the remaining work on a "quasi pro bono" basis but would not render accounts or expect payment from Ms MG until she had received her spousal maintenance payments from Mr HK.

[20] They also noted that Ms MG continued to instruct Ms WL with knowledge of the fees being incurred.

Conflict of interests

[21] [Law firm A] recorded that Ms WL had no personal interest in the proceedings, but otherwise were unable to respond to the complaint without more detail from Ms MG.

⁹ This restriction is established by Regulation 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 (the Regulations).

Concluding comments

[22] [Law firm A] submitted that there were no valid complaints against Ms WL and that the Committee should determine to take no further action on them.

The Standards Committee determination

[23] The Standards Committee discerned the issues to be addressed as being:¹⁰

- Whether Ms WL failed to act competently, in a timely manner and in accordance with instructions received, and if so, whether Ms WL breached Rule 3 of the Rules;
- Whether Ms WL failed to act promptly on Ms MG's written request to uplift her file, and if so, whether Ms WL breached Rule 4.4.1 of the Rules;
- Whether Ms WL had a conflict of interest, and if so, whether Ms WL breached her professional obligations;
- Whether Ms WL failed to provide a fee estimate, and if so, did Ms WL breach Rule 9.4 of the Rules;
- Whether the Standards Committee had jurisdiction to inquire into the reasonableness of the fees charged.

[24] The Committee shared the description by [Law firm A] of Ms MG's complaints and the material provided, as being "prolix and generally incomprehensible" and endeavoured to examine each of the issues raised by Ms MG as best that they could be discerned.

Competence

[25] The Committee formed the view that the material provided, supported the view "that Ms WL provided competent, high quality legal representation through the period she was acting for Ms MG".¹¹

The allegation that Ms WL forced Ms MG to pursue proceedings or coerced her into filing an appeal

[26] The Committee could not find any evidence that Ms MG had unwillingly entered into any of the litigation which ensued, and referred to instances where Ms WL emphasised that it was up to Ms MG in the end, to make a decision as to what steps she wanted to take in the battle with Mr HK.

¹⁰ At [22].

¹¹ At [49].

[27] The Committee noted that Ms WL did outline various options available to Ms MG and referred specifically to a letter dated 21 November 2017, in which Ms WL gave Ms MG three options:

- (a) Continuing with the Family Court proceedings;
- (b) Trying to settle the proceedings;
- (c) Simply walking away.

Protecting and promoting Ms MG's interests

[28] At [56] of its determination, the Committee said:

The Standards Committee did not consider that Ms MG had provided any evidence which would substantiate her allegation that Ms WL had failed to give her adequate advice or had failed to protect and promote her interests. It was satisfied that, to the contrary, Ms WL provided high quality advice and used her best efforts to promote Ms MG's interests in what were challenging proceedings, both from a legal and tactical perspective.

Losing critical papers

[29] The Committee was unable to ascertain what "*critical discovery papers*" Ms MG alleged that Ms WL had lost and what evidence she was alleged to have failed to file. In the absence of sufficient particulars, this aspect of Ms MG's complaint could be taken no further.¹²

Conclusion

[30] The Committee concluded that "[it] did not consider that Ms MG had provided any evidence which would demonstrate, on the balance of probabilities, that Ms WL had failed to act competently, in a timely manner and in accordance with instructions received."¹³

Uplifting files

[31] The Standards Committee considered "it unsurprising that it took some time to prepare Ms MG's files to be couriered to her. It did not consider a little over two months to be an unreasonable delay, particularly when that period included the Christmas and New Year break."¹⁴

¹² At [60].

¹³ At [66].

¹⁴ At [73].

Conflict of interests

[32] The Committee was unable to identify what Ms MG was referring to when she alleged that Ms WL was conflicted.

Fee estimates

[33] The Committee noted that it is difficult for a lawyer to provide estimates of litigation as it is developing. Having made that observation, the Committee referred to instances where Ms WL had provided estimates as best she was able to.

Fees – quantum

[34] The Committee referred to Reg 29 of the Regulations which provide that a Standards Committee does not have jurisdiction to consider complaints about fees where more than two years have elapsed since the fee was rendered, unless there are ‘special circumstances’ enabling it to do so.

[35] The Committee referred to its conclusions as to the quality of Ms WL’s advice and the fact that she had made concessions when rendering her accounts. Having done so, the Committee determined that there were no special circumstances that enabled the Committee to address the complaint about the quantum of Ms WL’s fees.

Conclusions/decision

[36] Having addressed Ms MG’s complaints and considered all of the material provided, the Committee determined that there was nothing to support a finding that Ms WL’s conduct amounted to unsatisfactory conduct as that term is defined in the Lawyers and Conveyancers Act 2006. It determined to take no further action on Ms MG’s complaints.

Ms MG’s application for review

[37] In general terms, Ms MG disagrees with the Committee’s determination. She has presented her application in the form of two ‘affidavits’ with a significant volume of supporting material.

[38] I include here direct quotes from her application:

Lacks impartial fairness, as NZLS knew **Proof of Burden was being done at time** Threshold of evidence was and is met.

Lawyer continued to bill 5 years wrong ‘unwinnable’ substantive maintenance type S.70 after dissolution’ and never filed evidence to support it.

Parties did not fall into after dissolution law, as short duration separate assets. Lawyer knew that, and forced PRA case without any chance of return on money, and wrong maintenance unwinnable, no chance of positive cent.

Lawyer self-gained fees, by taking (MG) on 5 year ‘ride’ as evidence supports.

[39] Ms MG has been requested on several occasions to rationalise the issues and refer to the specific supporting material. Ms MG’s responses have not assisted.

[40] Consequently, I have not attempted to summarise Ms MG’s application any further.

Ms WL’s response

[41] [Law firm A] represented Ms WL in this review and responded in detail to the matters raised in the application. They consider that the essence of Ms MG’s application was that her right to natural justice had been breached because:¹⁵

- a) She was not properly served with correspondence from the Complaints Service because the correspondence was sent to her email address and not her “*service address*” which is her home address.
- b) The correspondence sent to her email address could not be opened with the passwords supplied by the Complaints Service.
- c) The Complaints Service did not accept the further information she supplied after October 2021.
- d) The COVID-19 lockdown affected the justice of the case.
- e) The Complaints Service did not follow-up with phone calls or notifications.
- f) Her medical certificate was not factored into the determination.
- g) The Complaints Service had all the evidence but elected not to use it after the COVID-19 lockdown.
- h) The Committee’s decision is “*unsafe*”, “*unsound*” and “*brings into question the neutrality and impartiality of the process adopted by the Law Society*”.

[42] [Law firm A] submit that Ms MG had ample opportunity to provide whatever material she wished and if emails were not received then “it was incumbent on her to at the very least seek further assistance from the complaints service”. They say that she

¹⁵ Letter [Law firm A] to LCRO (4 August 2022) at [26].

“should not be permitted to use her own failure to open the attachment as grounds for asserting procedural unfairness”.

[43] [Law firm A] submit that Ms MG’s “other contentions of procedural unfairness have no weight”.

[44] [Law firm A] then address each of the other issues identified. I refer to their submissions as required.

Nature and scope of review

[45] The High Court has described a review by this Office in the following way:¹⁶

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.

[46] This review has been conducted in accordance with those comments.

Process

[47] During the course of this review, I have issued four Minutes in an attempt to enable the review to proceed in a defined and orderly manner. I summarise the content of each:

1. 29 August 2022 – seeking comments from [Law firm A] as to the admissibility of further evidence which was not before the Standards Committee.¹⁷
2. 13 October 2022 – directing that there be a preliminary hearing and a direction that Ms MG “come prepared to identify her specific complaints and be able to refer to which parts of the material provided to the Standards Committee and this Office [which] support those complaints”.
3. 22 February 2023 – This Minute followed the hearing on the day before, recording comments by myself and Ms NR that the material which Ms MG brought to the hearing did not follow the format as directed in the Minute of 13 October 2022.

¹⁶ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

¹⁷ The “further evidence” comprised two ‘affidavits’ by Ms MG occupying three Eastlight files.

4. 27 April 2023 – records that a USB stick and tranches of material filed by Ms MG on 13 October 2022, had not been viewed by me and had been returned to Ms MG. I advised that the second “affidavit” provided by Ms MG on 6 March 2023 would not form part of the review.¹⁸

The Minute also records that further material and documentation provided by Ms MG on 31 March had also been returned to her.¹⁹

After receiving comments from each party on my proposal to complete the review on the material to hand (on the papers), this Minute records that the review will be completed on the papers.

[48] The repeated attempts to have Ms MG identify her complaints in a straightforward manner and refer to evidence in support of each complaint have been to no avail.

[49] The complaints filed by Ms MG include references to the conduct of other lawyers engaged by Ms MG from time to time. This has only served to make it more difficult to identify the material which relates to the complaints about Ms WL.

[50] I record here that it has been impossible in this decision to refer to all of the material filed by Ms MG. At times, Ms MG has referred to alleged breaches of the High Court Rules. I cannot make any decision about those breaches – they are matters for the Court.

[51] The complaint lodged by Ms MG encompassed seven and a half pages of single-line cryptic allegations. In general terms, it has been extraordinarily difficult for the Standards Committee, myself, and counsel for Ms WL to refine these and the material provided by Ms MG to the Lawyers Complaints Service, and to this Office, into a manageable and understandable set of issues without being referenced to any item of the significant volume of material provided.

[52] The copies of documents provided by Ms MG has not been referenced to specific complaints and it has been impossible to deduce why the majority of the material has been provided.

¹⁸ Much of the material provided by Ms MG in conjunction with this review was not before the Standards Committee and has been returned to Ms MG.

¹⁹ This is the same course of events which occurred with the Standards Committee.

The preliminary hearing and procedural decision

[53] The preliminary hearing directed in the Minute of 13 October 2022, took place on 21 February 2023. The primary purpose for the preliminary hearing was to endeavour to have Ms MG clearly identify her complaints, and to refer to specific items of the voluminous material provided by her, which supported each complaint. Unfortunately, the material provided by Ms MG, and the discussion which took place, did not assist.

[54] Following that hearing I issued a decision²⁰ in which I recorded the events which had occurred during the hearing and in the days following. I also advised the parties that the review would be completed on the papers.²¹

Review

Natural justice

[55] In her review application, Ms MG says:

“Unsafe decision – non-notified premature closure, incomplete complaint, missed its evidence.”²²

By this, I understand Ms MG to mean that the Committee decided the complaint without giving her the opportunity to provide all of the material in support of her complaints. Ms MG has cited a number of authorities²³ which affirm the principle that a party must be given the full opportunity to make submissions and provide evidence.

[56] The annexure to the Committee’s decision records in detail the procedural steps taken by the Lawyers Complaints Service and the Standards Committee.

[57] I am satisfied that Ms MG was afforded every opportunity to provide material in support of her complaints to the Committee. I take particular note that the Committee did review the new material provided by Ms MG and formed the view that “it was largely a repetition of the material submitted when the complaints were first made” and “to the extent that any of the material was fresh, [it] could identify nothing which would persuade it to depart from the decisions made on 22 September 2021”²⁴ and reaffirmed those decisions.

²⁰ Procedural decision (27 April 2023).

²¹ Pursuant to s 206(2) Lawyers and Conveyancers Act 2006, the parties were advised by letter, dated 10 March 2023, that I considered that the review could be completed in that manner, and requested comments.

²² These assertions are what would be termed a breach of natural justice.

²³ Ms MG refers (inter alia) to litigation arising out of the Erebus and Pike River commissions.

²⁴ Annexure to Standards Committee determination at [36].

[58] Ms MG's assertions are not accepted.

Ms MG's complaints

[59] I adopt here the summary as set out by the Committee at [29] of its determination:

- (i) That Ms WL failed to "*competently represent*" Ms MG;
- (ii) That Ms WL failed to provide "*adequate representation*";
- (iii) That Ms WL acted "*negligently*";
- (iv) That Ms WL "*forced*" Ms MG to pursue unmeritorious Relationship Property proceedings;
- (v) That Ms WL "*coerced*" Ms MG to file an appeal;
- (vi) That Ms WL failed to provide adequate advice;
- (vii) That Ms WL failed to protect and promote Ms MG's interests;
- (viii) That Ms WL failed to advise Ms MG about alternatives to litigation;
- (ix) That Ms WL lost "*critical discovery papers*";
- (x) That Ms WL failed to file evidence;
- (xi) That Ms WL failed to achieve anything of value; and
- (xii) That Ms WL generally caused Ms MG to suffer losses.

Allegations of coercion

[60] Ms MG has said a number of times that Ms WL tried to coerce and bully her into pursuing Relationship Property proceedings. She refers, for example, to:

- Email from Ms WL to Ms MG 12 February 2014:

I note you are coming in to see me ... and at this appointment we will go through your thoughts on relationship property together.
- Her handwritten note:

(WL) was setting me up trying to draw me into PRA.
- Email to Ms WL and another (28 February 2014):

I'm totally reliant on my Lawyer and Barrister & I follow directions once I am advised.

[61] Ms WL's advice to lodge Relationship Property proceedings was part of the defence to Mr HK's claims pursuant to the Domestic Actions Act 1975.

[62] I acknowledge that Ms MG expressed her reservations about proceeding down that path on a number of occasions, but she took Ms WL's advice, and proceedings were filed.

[63] The claim met spirited opposition from Mr HK and Ms MG alleges that the course recommended by Ms WL only served to increase the fees charged.

[64] However, Ms WL was at pains to make sure that Ms MG understood that the decision to continue with the litigation was hers to make. For example, Ms WL sent a letter to Ms MG dated 5 February 2014 noting:

I do wish to reiterate to you that at the end of the day it is your case and it is up to you whether you wish to pursue the litigation.

[65] Mr HK was a determined litigant. Ms MG herself has suggested that part of his strategy was to inflict as much "damage to Ms MG as he could."²⁵ It was necessary to counter the various actions commenced by Mr HK and in addition, it was necessary for Ms MG to pursue spousal and child maintenance from Mr HK. All proceedings and advice incurred fees.

[66] Ms MG instructed Ms WL to continue with various actions to counter steps being taken by Mr HK. I refer for example to:

- Email Ms MG to Ms WL and another (6 May 2014):
 1. Do not allow 1 additional day to slip by on that security. I thought [H] had 7 days to sign it else we get court to. Please keep alert in your system as to exact day that that needs to happen.
 2. I want you to start proceedings of bankruptcy now immediately on [H]. Do not wait till we get a court order on greater long term amount. This type of guy needs full force NOW. It still enables us to go for the longer term Spousal Maintenance anyway at same time the bankruptcy proceedings are in action.

I want all lawyers working towards peace for my family.
- Email to Ms WL 31 January 2014:
 3. ... Waste no time in filing that ...
 4. Draft those applications ...

²⁵ Personal and financial.

Competence

[67] In *Auckland Standards Committee No 3 v Castles*, the Lawyers and Conveyancers Disciplinary Tribunal said:²⁶

... it is not [the] Tribunal's role to closely analyse and second guess every move of counsel during each piece of litigation. We consider our role is to take an overview, and to look at patterns of behaviour. However we do have expert evidence ... of some glaringly poor decisions and mismanagement which simply cannot be ignored by the Tribunal.

[68] The Tribunal described Mr Castles' advice being 'doomed,' and that he had "failed to stand up to opposing counsel"²⁷ and had taken steps in the litigation that were "never a potential option".²⁸

[69] These comments reflect the flavour of what is required before an adverse disciplinary finding will follow.

[70] Ms WL's advice cannot be described in these terms.

[71] Contrary to Ms MG's complaints that Ms WL lacked competence, she, at times in fact, complemented Ms WL for the results achieved, and acknowledged the fact that Ms WL was undertaking work on a pro bono basis. Ms MG sent an email to Ms WL on 29 January 2014, where she said:

Firstly, I would like to record my thanks for your decision to treat the work done in obtaining a GSR [sic] as pro bono.

It is great you won a victory and obtained costs, however as you pointed out at the time the GSR has little real teeth. Nonetheless, he hates to lose and, as this whole sorry business has become an extension of his dedicated programme of psychological warfare / abuse of me, it could herald a turning point.

[72] In conclusion, Ms MG's complaints that Ms WL lacked competence, are rejected.

Fees

[73] Ms MG's complaints about the quantum of Ms WL's fees are linked to her complaints about competence. In her complaint, Ms MG says:

The net effect was gross overcharging for incompetent representation.

²⁶ [2013] NZLCDT 53 at [177].

²⁷ At [181].

²⁸ At [181](6).

[74] Given that Ms MG's complaints about Ms WL's competence have been dismissed,²⁹ it follows then that Ms WL's fees must be considered on the basis that they were incurred for competent advice.

[75] However, having made this observation, I decline to make any further comments about the quantum of fees for the reasons which follow.

Regulation 29 of the Complaints Service and Standards Committees Regulations 2008

[76] Regulation 29 provides:

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.

[77] Ms WL's first invoice was rendered in 2013. Her last invoice was rendered on 20 December 2017. Ms MG's complaints were lodged on 12 February 2021. Unless, therefore, there were special circumstances which justified addressing the quantum of fees, the complaint must fail.

[78] At [98] of its determination,³⁰ the Committee has referred to the judgment of the Court of Appeal in *Cortez Investments Limited v Olphert & Collins*, where the Court said:³¹

"... [all] that can be said is that to be special circumstances must be abnormal, uncommon, or out of the ordinary". Examples of "special circumstances" might include a situation where a lawyer had undertaken no work at all for the fees invoiced or a matter where the work undertaken was deemed to be incompetent.

[79] However, other comments made by the three Judges in *Cortez* suggest that Ms MG should not be deprived of the opportunity to have Ms WL's fees examined. I refer, for example, to comments made by Richardson J:³²

... the expression "special circumstances" should not be construed narrowly and it would be contrary to the social policies underlying these statutory provisions to impose on an applicant the burden of establishing a serious risk of injustice. Rather, it is a question of where the interests of justice lie in all the circumstances.

²⁹ At [72] above.

³⁰ Standards Committee determination, above n 2, at [98].

³¹ [1984] 2 NZLR 434 and 441.

³² At 439.

[80] However, in this instance, I consider the interests of justice lie with Ms WL for the following reasons:

- Ms WL's terms of engagement (26 February 2013) provided that fees would be based on the time spent. Ms MG continued to instruct Ms WL for some years after that, and after Ms WL had rendered interim accounts.
- Ms WL's last invoice was rendered more than three years before Ms MG lodged her complaint.
- The complaint was lodged after all issues between Ms MG and Mr HK were settled and it can not be discounted that the work undertaken by Ms WL played a part in enabling this to occur.
- I have decided that there is no merit in Ms MG's complaints that Ms WL lacked competence.
- Ms WL has applied a reasonably significant discount to her fees.
- Ms WL acted on a 'quasi' pro bono basis.³³

[81] Taking these factors into account, I do not consider that there are any special circumstances which require the quantum of Ms WL's fees to be investigated.

Estimates

[82] Rule 9.4 of the Conduct and Client Care Rules provides that a lawyer must provide an estimate upon request. I have not sighted any correspondence from Ms MG where she asked for an estimate of fees but accept that there may have been times when she did so.

[83] It is often difficult to estimate fees that may be incurred in the course of litigation, as it will depend upon what steps the other party or parties take. I have, however, noted a number of emails and correspondence from Ms WL where she did provide estimates. I refer by way of example to:

- Email of 18 June 2013.
- Letter of 5 February 2014.
- Letter of 21 November 2017.

³³ Email WL to MG (21 November 2017).

[84] As Ms MG has not identified a specific time when an estimate of costs was requested, but not provided, this complaint cannot be sustained.

Delay in uplifting file

[85] Rule 4.4.1 of the Conduct and Client Care Rules provides:

Subject to any statutory provisions to the contrary, upon changing lawyers a client has the right either in person or through the new lawyer to uplift all documents, records, funds, or property held on the client's behalf. The former lawyer must act upon any written request to uplift documents without undue delay subject only to any lien that the former lawyer may claim.

[86] Ms WL began acting for Ms MG in February 2013. Ms MG terminated her instructions in February 2018 and requested to uplift her files on 19 November 2020.

[87] Ms WL's files were voluminous. They were made up of electronic and hard copy files. The files were sent by courier to Ms MG in early February 2021.

[88] Allowing for the Christmas break, Ms MG received her files in a little over two months from the date on which she had requested them.

[89] In *Wilson v Legal Complaints Review Officer*,³⁴ Hinton J addressed the question of what constitutes undue delay in responding to a request to uplift files. In that case, Mr Wilson had acted for the client for some years and held 270 files and supporting material.

[90] In her judgment, her Honour made a number of comments which are equally applicable in this instance. Her Honour said:

[41] The meaning of "undue delay" is important in this case. The phrase "undue delay" is not defined in the Act or the Rules. It carries its ordinary meaning of inappropriate or unjustifiable. "Unjustifiable", in turn, means inexcusable or unacceptable.

...

[47] A nine-month delay will of course almost invariably be undue. One month will often be undue, sometimes even less.

[48] But the question of what is undue delay, has to be looked at in context and in a way that is not unduly technical, literal or absolute.

[49] It needs to be borne in mind that there is a difference between unsatisfactory conduct (the result of undue delay), and excusable slippage.

³⁴ [2016] NZHC 2288.

[91] In this instance it is relevant that the period of time between the request and the files being available, included the Christmas break and it is well known that the weeks before and after Christmas are a busy time for lawyers.

[92] I also take into account the volume of files and that it took some time to collate the electronic and hard copy files.

[93] Finally, even if I came to the view that Ms WL had been tardy in making the files available, I do not consider it warrants an adverse disciplinary finding.³⁵

Conflict of interests

[94] With respect to this complaint, [Law firm A] say:³⁶

Ms MG alleges Ms WL had a conflict of interest in acting for her but does not set out the basis of this alleged conflict. For the avoidance of doubt, it is submitted that Ms WL acted in Ms MG's best interests at all times. She had no personal interest in the proceedings nor any interests in respect of Mr HK. Without any further detail from Ms MG we cannot take this point further.

[95] It is difficult to ascertain what Ms MG is referring to when she asserts that Ms WL had a conflict of interests. The best I can make of this complaint is that Ms MG considers that Ms WL had an arrangement with Mr Mitchell when referring Ms MG to him.

[96] There is absolutely no evidence to support this allegation. It is an absurd allegation and I give it no credibility.

[97] An alternative option as to what Ms MG is meaning, is that she considers that somehow, Ms WL was conflicted in that she was acting against Ms MG's interests with the purpose of increasing her own fees. It follows that having held that Ms WL acted competently, this suggestion is not accepted.

Other matters

[98] I acknowledge that in this decision, I have not addressed some of the complaints identified by the Committee. That does not mean that I have not had regard to them but there is insufficient evidence to support them, and even if there were, any failing on Ms WL's part does not warrant an adverse disciplinary finding.

³⁵ *National Standards Committee v Shand* [2019] NZLCDT 2.

³⁶ [Law firm A] response to Standards Committee complaint (16 July 2021) at [40].

Decision

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

Anonymised publication

[100] Pursuant to s 206(4) of the Lawyers and Conveyancers Act, I direct that this decision be published in an anonymised format on the website of this Office.

DATED this 30TH day of JUNE 2023

O Vaughan
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 MG as the Applicant
Ms WL as the Respondent
Mrs NR and Ms BC as the Respondent's Representatives
[Area] Standards Committee [X]
New Zealand Law Society