



THE OFFICE OF THE
LEGAL SERVICES COMMISSIONER

J-L
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Private & Confidential

Mr Mohammed Tariq
PO Box 27
ST MARYS NSW 2760

Our ref: 30988_20, 30989, 30990 & 30991
Contact: Steve Mark

1 September 2011

By email: tariq_aust@hotmail.com

Dear Mr Tariq

My Complaints about Philip Scroope, Tony Barakat, Russell Keddie and Scott Roulstone

I refer to our previous correspondence.

I have now completed the investigation of my complaints about Philip Scroope, Tony Barakat, Russell Keddie and Scott Roulstone.

You will recall my complaints were based on a costs assessor's referral and alleged as against each practitioner:

1. the practitioner was responsible for the charging of excessive legal costs to yourself, your wife Khalida and your daughter Ambreen;
2. the practitioner failed to make costs disclosure before, or as soon as practicable after, the law practice was retained in the matter, in contravention of s.311 of *Legal Profession Act 2004*.

Complaint investigation

In investigating complaints, this Office must, firstly, consider the nature of the complaint and whether the conduct complained of might amount to professional misconduct or unsatisfactory professional conduct, and secondly evaluate the evidence in support of the allegations to see if the conduct can be proven.

If I am satisfied there is a reasonable likelihood that a legal practitioner will be found by the disciplinary Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct, then I must commence disciplinary proceedings in the Tribunal, unless the conduct involves unsatisfactory professional conduct only in which case I may caution and/or



reprimand the practitioner and/or make a compensation order and/or impose specified conditions on the practitioner's practising certificate.

Allegation 1 - Charging of excessive legal costs

The consideration of whether charging is so excessive as to be unsatisfactory professional conduct or professional misconduct involves a comparison of two figures: the amount in fact charged and the amount which was in all the circumstances reasonable to charge, followed by an evaluation of whether the overcharging was so excessive as to be characterised as "gross".

The amounts charged to your family were:

You - \$85,761.47
Khalida - \$15,146.30
Ambreen - \$17,390.39

For the purposes of comparison, I accept that in your matter, a discount of \$15,627.44 including GST was applied to professional costs at the time of billing, with the result that \$68,863.64 was charged for professional costs, excluding GST.

Likewise, I accept that in Khalida's matter, a discount of \$1,686.46 including GST was applied to professional costs at the time of billing, with the result \$10,605.55 was charged for professional costs, excluding GST.

In Ambreen's matter, \$12,518.00 was charged for professional costs, excluding GST.

There are presently five separate "assessments" of the amount that was a fair and reasonable amount to charge your family:

1. The amount put forward as fair and reasonable by costs consultants engaged to act on your behalf in the costs assessments
2. The costs assessor's determinations
3. The opinion of the costs consultant engaged on behalf of Keddie Lawyers in the costs assessments
4. The independent expert opinion obtained by this Office during the investigation
5. The independent expert opinion obtained by the practitioners in the course of the investigation

Whilst there is a consensus that your family was overcharged, the extent of the overcharging varies as between the various opinions. Taking the costs charged to you as an example and applying the discount of \$15,627.44 at the time of billing towards professional costs, the extent by which the costs as

charged to you exceeded fair and reasonable costs ranges from 8.23% to 74%.

The fact that there was an overcharge is not sufficient to ground disciplinary proceedings - there must be a reasonable likelihood that the disciplinary Tribunal would find the overcharge was so excessive as to be characterised as gross.

A recent Decision of the Tribunal - *Bar Association of NSW v Ward* [2011] NSWADT 33 (22 February 2011) – provides a useful yardstick. In that matter, the overcharge, based on the independent expert's opinion, was 63%. In evaluating whether the overcharging was so excessive as to be characterised as "gross", the Tribunal noted that the overcharge fell "*considerably short of a doubling*" of the expert's assessment of fair and reasonable costs. It was not satisfied the costs charged were grossly excessive.

Having regard to the range of the extent of the overcharge in your matters, as expressed in the various opinions, and given the Tribunal's reasoning as outlined above, I am not satisfied there is a reasonable likelihood the overcharging of your family would be regarded by the Tribunal as so gross as to constitute unsatisfactory professional conduct or professional misconduct.

There is another relevant factor. The practitioners submit there was a considerable amount of work performed on the files for which no charge was made in the accounts sent to your family, those items totalling \$7,123.96 including GST for your matter and \$627.00 including GST for Khalida's matter.

There has been no independent assessment of the fairness and reasonableness of the additional items. However, it appears they were identified by the costs consultants engaged by Keddies for the costs assessments, and those costs consultants say there is documentary support for them on file. Against this background, it is possible the disciplinary Tribunal would be prepared to bring all, or some, of those items into account, which would have the effect of reducing the amount of the overcharge.

In light of the above, I cannot be satisfied there is a reasonable likelihood the Tribunal would find the charging was so grossly excessive as to be unsatisfactory professional conduct or professional misconduct. It follows that I must dismiss the complaint of overcharging.

Allegation 2 - Failure to make timely costs disclosure

You first instructed Keddies on 2 February 2007. Khalida and Ambreen first instructed Keddies on 23 July 2007. The Costs Assessor found you did not sign a costs agreement until 12 April 2007, and that a costs agreement and disclosure document was not provided to each of Khalida and Ambreen until about 30 November 2007, some four months after instructions were taken, and after proceedings had been commenced on their behalf.

It appears costs disclosure was made late, in contravention of section 311 of the *Legal Profession Act 2004*.

Conduct consisting of a contravention of the *Legal Profession Act* is capable of being unsatisfactory professional conduct or professional misconduct.

I have formed the preliminary view that the practitioners' conduct might be reasonably likely to be found by the disciplinary Tribunal to be at least unsatisfactory professional conduct. However, before making a final decision, and in accordance with my usual practice, I have written to the practitioners noting they appear to have failed to make timely costs disclosure, and inviting their submissions as to how I should deal with such conduct.

I will contact you again once those submissions have been received and considered.

Yours sincerely



Steve Mark
Commissioner