

## NOTICE OF DETERMINATION

A notice made under s318 of the *Legal Profession Uniform Law (Victoria)*.

**Complainant:** [REDACTED]

**Respondent Lawyer/Law Practice:** [REDACTED] of [REDACTED]

**Ref: C** [REDACTED]

### ORDERS

Pursuant to s292 of the *Legal Profession Uniform Law (Victoria)* ("the Uniform Law"), I have decided to make a binding determination about costs as follows –

- The Lawyer's professional costs of \$3,300.00 in Tax Invoice 8413 dated 22 September 2015 are fair and reasonable in all the circumstances; and
- The legal costs have been paid in full and therefore, the Complainant is to pay nothing further in legal costs.

### STATEMENT OF REASONS

1. On or around 14 November 2014 [REDACTED] "the Complainant" was given a costs disclosure statement.
2. On 27 November 2014 the Complainant signed a costs agreement dated 14 November 2014, agreeing to the Lawyer's professional charges of:
  - Solicitor preparation: \$2,200.00
  - Instructor's fee (per day): \$1,100.00
3. The Complainant's appeal against conviction ("the hearing") was listed for three days at the County Court.
4. On 18 June 2015 the Lawyer issued Tax Invoice no. 8155 for \$3,300.00 to prepare for the hearing and attend Court for an adjournment application. The Complainant is not disputing that bill.
5. On 21 August 2015 the Complainant attended a conference with the Lawyer and the barrister [REDACTED] ("Counsel") where the Complainant was told there was a real chance the hearing would run longer than the scheduled three days.
6. The Complainant was also told if the hearing ran longer than three days then:
  - the ongoing preparation and daily attendance fee would not be covered by funds in trust;

- the Lawyer could only attend three days of the hearing unless further funds were paid into his trust account;
  - if further funds were not provided the Lawyer would focus his attendance on some of the key TAC witnesses; and
  - Counsel may also require further preparation fees.
7. At that meeting the Lawyer reiterated his own daily fee of \$1,100.00 and Counsel's daily fee of \$5,500.00.
  8. The Lawyer and Counsel had to decide which days were the most important for the Lawyer to attend. It was agreed that the Lawyer would attend the hearing on the days where prosecution witnesses were giving evidence. This was important because their evidence was not known. However the Lawyer and Counsel were both confident about the evidence the Complainant was likely to give.
  9. The hearing continued for six days, on 8, 9, 10, 14, 15 and 16 September 2015 and the Complainant was represented by Counsel during the entire time.
  10. The Lawyer attended the hearing over four days.
  11. On 8 September 2015, in the morning, the Lawyer attended an adjournment application which was not related to the Complainant's matter. The Lawyer was present at Court with the Complainant and Counsel from 11.00am. The Complainant's matter was in the Reserve List until 1.00pm and proceedings commenced before Judge [REDACTED] at 2.15pm.
  12. On 9 September 2015, the Lawyer was present at the hearing throughout the day.
  13. On 10 September 2015 the Complainant did not attend the hearing for medical reasons. The hearing was adjourned until 14 September 2015. The Lawyer attended Court on this day in anticipation of the matter proceeding and the prosecution case closing. When the hearing was adjourned, Counsel and the Lawyer conferred for some time about the anticipated evidence of the Complainant.
  14. On 14 September 2015, in the morning, the Lawyer attended a pre-existing court commitment, an adjournment application not related to the Complainant's matter. The Lawyer was present at the hearing from 11.30am.
  15. On 22 September 2015 the Lawyer issued Tax Invoice no. 8413 for \$36,449.70, \$3,300.00 of which was for his own professional costs to prepare for and attend the hearing.
  16. Subsequently the Complainant lost her appeal against conviction and she was found guilty.
  17. The Complainant was on notice that the Lawyer would not be present at all times during the days of the hearing. The Complainant was unwilling to pay more to secure the Lawyer's attendance for the entire hearing. As it was, the Complainant was represented by the Lawyer over four days, instead of the agreed three days that was already paid.
  18. I cannot attribute the Complainant's finding of guilt to the Lawyer's absence on two days of the hearing.

19. The Lawyer's professional costs of \$3,300.00 in Tax Invoice no. 8413 dated 22 September 2015 are fair and reasonable in all the circumstances.

**DETERMINATION & REASONS**

20. Having considered all of the evidence and relevant law, and having made the above findings on the issues in dispute, I determine that it is fair and reasonable in all the circumstances to make the orders detailed above.



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**Michael McGarvie**  
**Victorian Legal Services Commissioner**  
Date: 20 May 2016