

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)* (“Uniform Law”).

Complainant: [REDACTED]
Respondent Lawyer / Law Practice: [REDACTED] / [REDACTED]
Case reference: [REDACTED]

Pursuant to section 292 of the Uniform law, I make a binding determination about the costs of the Law Practice’s bill dated 30 November 2016, which is the subject of the dispute.

I consider the amount of legal costs that are fair and reasonable in all the circumstances in relation to this bill to be **\$0.00**.

Orders

- 1) Pursuant to section 290(2)(c) of the Uniform Law, I make the following order –
That the Law Practice reduces its fees from \$1,100.00 to \$0.00.

Statement of Reasons

Background

1. In late 2014, the Complainant engaged the Law Practice to deal with his divorce settlement matters.
2. On 26 May 2016, the Law Practice issued the Complainant with a bill for \$231.00.
3. On 7 June 2016, the Law Practice issued the Complainant with a bill for \$246.40.
4. On 30 November 2016, the Law Practice issued the Complainant with a bill for \$1,100.00. The attendance on this bill was solely a disbursement for fees payable to [REDACTED] of Counsel (“the Barrister”).
5. On 31 October 2016, the Complainant made a complaint to this office about the Respondent Lawyer, disputing the bills dated 7 June 2016 (“the out-of-time bill”) and 30 November 2016 (“the disputed bill”).
6. On 29 March 2017, the Complainant was advised that my office would not be dealing with his dispute about the out-of-time bill and that the disputed bill was the only bill my office would deal with.
7. The Complainant and Respondent Lawyer were unable to resolve the dispute informally.

ISSUES IN DISPUTE

The issues that remain in dispute are whether –

- (a) The Law Practice's disputed bill is fair and reasonable; and
- (b) The Respondent Lawyer was responsible for poor case handling and inadequate service.

Complainant's Case

The Complainant raised the following concerns in his complaint –

a. Legal Costs

- He advised the Law Practice that he could not afford to pay \$10,000.00, as requested, for the Barrister's fees;
- He should not have to pay the Barrister's costs, because the Barrister initially advised that he did not want to take the case;
- He was advised that a costs agreement would be provided to him, which did not happen;
- Despite asking the Respondent Lawyer not to undertake any further work without prior approval on 13 March 2016, he was billed for matters after this date;
- The Law Practice's fees are in excess of its quote. It anticipated total costs of approximately \$5,000.00 (later revised to \$50,000.00 if the case went to court) with an expected asset split of 60/40 in the complainant's favour. The end result was a 63/37 split in favour of his ex-wife, while the Law Practice's bills to him were in excess of \$30,000.00.

b. Poor case handling and inadequate service

- The Law Practice advised the complainant that the court hearing should be adjourned because the matter was close to settling and that the lawyer would organise a conference call to do so. However, either the conference call never took place, or he was not advised of it.
- The matter could have been resolved quicker. Instead, it ended in a final court hearing with additional costs in excess of \$10,000.00 in legal and court fees.
- The Law Practice threatened to withdraw its services.

Respondent Lawyer's case

The Respondent Lawyer said the following in response to the complaint –

a. Legal Costs

- The legal costs charged in the Law Practice's 30 November 2016 bill relate solely to the Barrister's fees.

- At the conference where Counsel provided advice, a junior lawyer at the Law Practice, [REDACTED] (“junior lawyer”), attended. However, the junior lawyer did not take a file note of discussions, because he was not competent and left the Law Practice to start his own law practice.
- The Barrister advised that he was briefed via email to provide advice in relation to the matter.
- The Barrister was able to provide the documents to evidence that he was in fact sent various documents in this matter, including Court documents, a draft chronology, a back sheet and emails attaching these documents.

b. Poor case handling and inadequate service

- The Complainant’s matter was handled by the junior lawyer, given he was absent from the Law Practice in 2015, and had to deal with other work related matters outside of the office in early 2016.

Findings on Issues in Dispute

a. Legal Costs

More than 60 days elapsed between the receipt of the complaint and the legal costs becoming payable relating to the out-of-time bill. Given the complaint was made within a further four month period pursuant to section 272(2)(a) of the Uniform Law, my office was able to consider using its discretion to deal with this bill, if the Complainant provided reasons to satisfy me that it was just and fair to deal with his dispute about this bill despite the delay. On 29 March 2017, the Complainant was advised that my office would not be dealing with his dispute about this bill, because he did not respond to our requests for reasons.

I consider that **\$0.00** represents the fair and reasonable legal costs for the Law Practice’s disputed bill dated 30 November 2016. The Law Practice is not able to charge in relation to this bill, because it has not provided my office with evidence of any work completed by the Barrister to substantiate its costs, despite being asked on numerous occasions to do so.

Although the Law Practice is not able to charge in relation to its disputed bill, the Complainant has not been able to substantiate the following of his claims –

- That the lawyer failed to put in place steps to save him costs in his matter;
- That costs disclosure was not provided;
- That he did not want the Barrister engaged in the matter.

b. Poor case handling and inadequate service

The Complainant has not been able to substantiate that the Law Practice’s case handling and service was poor, and has led to excessive legal costs and court fees. I do not accept the Complainant’s contention here.

Determinations & Reasons

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.

Further, in making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and the following matters. I have also considered the principles in section 172.



Michael McGarvie
Victorian Legal Services Commissioner
30 May 2017