

No GOVERNANCE ON

(A6)

- 1) TYPE OF DOCUMENT
- 2) PARTIES INVOLVED
- 3) DATE

- 4) PAGE NUMBER
- 5) NUMBER OF PAGES
- 6) AUTHOR

1. COMPLETION OF REVIEW

- 1.1 The review panel has completed its review.
- 1.2 Only the review panel's certificates, and this document comprise the panel's reasons for decision.

2. DOCUMENTS RECEIVED

The review panel received the following documents:

- 2.1 Form 4 Application for Review of Determination of a Costs Assessor lodged with the Supreme Court 16 February 2015.
- 2.2 Document of 2 pages forming part of that application headed "The Grounds for Making the Application for Review are as Follows".
- 2.3 Attachments to the application largely comprising material relating to payment, as set out in the grounds document referred to at 2.3 above.
- 2.4 Form 1 Certificate of Determination of Costs of assessor Gordon A Salier AM dated 23 December 2014.
- 2.5 Document headed "Statement of Reasons" of 11 pages dated 23 December 2014 and bearing the assessor Gordon A Salier AM.
- 2.6 The assessor's file including the original application for assessment and the objections.
- 2.7 The panel requested documents and information from the parties by letter of 4 March 2015 and then again 16 March 2015. The panel received from Ms Duffy an email of 19 March 2015 with numerous attachments and annexures.
- 2.8 The panel required final material from the parties regarding payment to reach the panel by 26 March 2015, through its letter of 20 March 2015. In response to that letter, the panel received an email of 25 March 2015 from the costs review respondent Clive Mills & Associates, a letter from its accountant of 24 March 2015, and a further email of 25 March 2015. Copies of those documents were sent to the costs review applicant Ms Duffy as Trustee for Tasman Herbert Duffy.
- 2.9 The panel did not receive any further material from Ms Duffy in response the panel's letter of 20 March 2015.
- 2.10 The panel considered all the material it received.

3. TERMINOLOGY

In these reasons the panel may use the following terminology:

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- 6.6 However nothing turns on that, and neither party has raised the issue of the naming or identity of the costs review applicant, except perhaps through the title on the review application.
- 6.7 In the end, provided it is clear from the panel's certificates that the liability of Ms Duffy is restricted to the funds of which is trustee for Tasman Herbert Duffy, then it is unlikely that the precise method of describing the now costs review applicant is important.
- 6.8 The panel in its certificate has described the costs review applicant in the same way as in the assessor's certificate, namely "Carline Janne Duffy as trustee for Tasman Herbert Duffy", as the review applicant could only be a party to the original assessment, that is how the costs respondent was described in the original assessment, and that description does make it sufficiently clear that Tasman Herbert Duffy was the client of the solicitor, and recovery is restricted to funds of which Carline Janne Duffy is trustee.

7. FRESH MATERIAL?

- 7.1 Section 375 of LPA 2004 provides that a panel would normally conduct "the assessment" (by which the legislation means the review, and if required any re-assessment) on the evidence that was received by the assessor, and generally the panel is not to receive submissions, fresh evidence or evidence in addition to or in substitution for the evidence received by the assessor.
- 7.2 A panel must be careful to ensure that the grounds do not themselves become fresh material that was not before the assessor. If the grounds do stray into that area, it may be appropriate (in order to ensure procedural fairness), that a panel allow a costs review respondent to respond to that additional material.
- 7.3 It does appear to the panel that there was material sent in support of the grounds that may not have been before the original assessor. The panel has determined to consider that material, and the panel has considered it. The only significant material by way of additional material related to the only issue in this assessment, namely what payments were made in respect of the costs assessed.
- 7.4 On 20 March 2015 the panel wrote to the parties indicating specifically that it would consider the receipts of 18 April 2013, 10 May 2013 and 16 May 2013, which may not have been before the assessor.
- 7.5 In the same letter, the panel required a trust and office account ledger from the solicitor to be sent to it and to Ms Duffy. The panel received in response an email of 25 March 2015 attaching a letter dated 24 March 2015. That letter of 24 March 2015 attached trust account bank statements for April and May 2013, a trust account payment advice in respect of a trust to office transfer of \$2,112.91 on 16 May 2013, trust account receipts in respect of the payments of \$2,500.00 and \$2,647.59 of 18 April 2013 and 10 May 2013 respectively and a trust account ledger in respect of matter number 2486, involving the client and Ms Duffy as the client's "trustee". The panel received a further document with another email of 25 March 2015 from the solicitor.

TAS WAS THE ACCOUNT STATEMENT DATE 23 MAR 2015 8/16
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