LP /2019

IN THE MATTER	of Part III of the Law Practitioners' Act 1993-94
AND IN THE MATTER	of a complaint alleging professional misconduct
BETWEEN	**JOHN AND TARA SCOTT** of Rarotonga, Cook Islands Complainant
AND	**ROSS WAKEFIELD HOLMES**, of Rarotonga, Barrister and Solicitor Respondent

Date of complaint: 15 September 2016

Date of Decision: 23 July 2019

DECISION OF HUGH WILLIAMS, CJ

[WILL0627.dss]

Result: For the reasons set out in this decision, the complaint of professional misconduct by the Complainants against the Respondent is dismissed.

[1] On 15 September 2016 Mr John Scott, acting on behalf of his wife, Mrs Tara Scott, and the other appellants in the Privy Council appeal, *Descendants of Utanga & Arerangi Tumu v. Descendants of Iopu Tumu*[1], lodged a complaint with the Chief Justice alleging professional misconduct against Mr Ross Wakefield Holmes, the solicitor, and one of the counsel, for the appellants in that matter.

[2] The appeal to the Privy Council was one of a pair of appeals, the first to their Lordships from the Cook Islands in over a century, the other being *Baudinet v. Tavioni & Macquarie*[2].

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[1] [2012] UKPC 34. Judgment delivered on 22 October 2012.
[2] [2012] UKPC 35. Judgment also delivered on 22 October 2012.

[3] In *Baudinet v. Macquarie* the appellants were unsuccessful. In *Utanga & Tumu v. Tumu* the appellants were successful. In each case the successful parties were held by their Lordships to be entitled to costs. The costs in *Baudinet v. Macquarie* were rapidly quantified and paid but in *Utanga & Tumu v. Tumu*, despite their Lordships allowing the appeal and requiring written submissions on costs within six weeks of the delivery of the judgment, the costs have never been quantified, the respondents have never been advised of the amount they owe and, as a result, the costs have never been paid.

[4] The fact that the costs order has never been quantified or paid is the nub of the complaint of professional misconduct by Mr and Mrs Scott against Mr Holmes.

[5] The grounds on which complaints of professional misconduct are to be judged appears in s 15(2) of the Law Practitioners' Act 1993-94 which reads:

> 15. Complaints of professional misconduct – (1) …
>
> (2) Where the Chief Justice receives … a complaint or has reasonable cause to suspect that a practitioner who is or was a member of the [Law] Society has in his professional capacity been –
>
> (a) guilty of misconduct; or
>
> (b) guilty of conduct unbecoming a barrister and solicitor or a barrister; or
>
> (c) negligent or incompetent, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practice as a barrister and solicitor or barrister only, as will tend to bring the profession into disrepute; or
>
> (d) …
>
> the Chief Justice shall, unless he is of the opinion on reasonable grounds that the complaint is frivolous or vexatious, require from the practitioner such written explanation, within such time as the Chief Justice thinks fit.

[6] Though the two are significantly different in form and intention, complainants often confuse complaints of professional misconduct with actions for professional negligence.

[7] Complaints of professional misconduct have, as their end point, an adjudication as to whether or not the facts underlying the complaint are of such gravity that the lawyers concerned had misconducted themselves in a way which breaches s 15(2) and to a degree which impinges on the practitioners' ability to be permitted to continue to practice law. It is therefore a procedure designed to protect members of the public from lawyers' behaviour that would "reasonably be regarded as disgraceful or dishonourable by [their] professional brethren of good repute and competency"[3]. It is well-settled that it is a public protection measure aimed at maintaining proper standards in the legal profession and setting an example to other lawyers. Being based on protection of the public it is not, primarily, concerned with the minutiae of solicitor-client relationships.

[8] It is also well-settled that conduct which amounts to mere negligence – even serious negligence – or errors of judgment only amounts to professional misconduct in extreme instances.

[9] That law is encapsulated in the Cook Islands in s 15(2)(c)(d) in, requiring, before a complaint of professional misconduct under those subsections can be upheld, that the conduct reflects on the practitioner's fitness to practice and necessitates a finding that the practitioner's actions will bring the profession into disrepute.

[10] The bar is deliberately set high so as to ensure that only practitioners' actions which are shown to reflect on their fitness to practice will expose them to findings of professional misconduct but, equally, that if a finding of professional misconduct is made against the practitioner, the sanctions are such as to set an example of that practitioner or even to remove him or her from the legal profession in order that the public will be protected from conduct which meets the *Allinson* test.

[11] It is equally well-settled that the professional misconduct regime, being a public protection and interest measure, is not a substitute for actions for professional negligence, the latter being a means whereby disgruntled clients can obtain redress against their lawyer for actions or omissions which are a departure from the lawyer's

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[3] *Allinson v. General Counsel of Medical Education and Registration* [1984] 1KB750.

responsibility to their clients which the plaintiff believes have caused them loss. It is thus very much focussed on the minutiae of the solicitor-client relationship and whether the detail of that relationship shows the lawyer has, or has not, met their responsibilities.

[12] Although s 20 of the Act gives the Chief Justice power to award compensation, the power is limited to $5,000 and only arises if the Chief Justice reaches the view either that the practitioner has misconducted themselves or in the "circumstances of the case that the making of the complaint was justified".

[13] To sum that up, the professional misconduct regime is directed at protecting the general public from misconduct of a degree which breaches s 15(2) while the professional negligence right of action is designed to regulate conduct between practitioners and their clients which is found to have breached the practitioner's responsibilities and duties and to obtain redress for what clients have suffered in that regard for breach.

[14] Returning from those general remarks to this professional misconduct complaint, the Chief Justice summarised the issues between the parties in a letter sent to them jointly on 19 June 2019. Rather than repeat the content of that letter a copy is **attached** to this decision (without attachments).

[15] It will be seen that, at the conclusion the addressees were invited to advise the Chief Justice if they considered the contents of the letter seriously incorrect. They were advised that, absent such comment, the complaint would be determined on the material then available.

[16] To understand what then happened, reference needs to be made to the way in which the complaint proceeded from its being lodged on 15 September 2015, regrettably nearly four years ago.

[17] As mentioned in the letter, the complaint of was referred to Mr Holmes in late 2016 (with its fifteen annexures) and Mr Holmes replied by letter dated 27 January 2016 (sic: 2017) (again with a number of attachments).

[18] That was referred to Mr Scott who responded by a 12 page letter dated 5 February – 3 March 2017 (together with over 26 attachments).

[19] Thereafter, in common with a number of other Law Practitioners' Act complaints, the matter ran into administrative difficulties as a result of which it could not be definitively established whether letters to and from the Chief Justice on disciplinary matters were dispatched to their addressees by the Registry. Unhappily, that situation persisted for a number of months, despite the Chief Justice's efforts to rectify the situation, and the situation was additionally complicated by the fact that, when it was definitely established what had gone to, and been received from, the parties to this matter, their responses included some new material but also enclosed additional copies of much of what had gone before.

[20] To the extent that the Registry is responsible for those difficulties, an apology is due to the parties in this matter.

[21] Because the material was largely repetitious, it is unnecessary to recount its contents save to note that in the letter to Mr Holmes of 16 April 2018[4] the observations were made:

> …
> In paragraph 53 of your reply dated 27 January 2016, you set several pre-conditions to your approaching the Privy Council to have the costs in the appeal where Mrs Scott was successful set and paid.
>
> Although, despite my best efforts, I have not been able to definitively establish that the conditions in 53(b) and (c) have been satisfied, my understanding is that is the case and therefore, presumably, you have initiated the application to have the Privy Council costs fixed, even though out of time. Indeed, I note that document 23 annexed to Mr Scott's 5 February 2017 reply is a letter dated 13 February 2017 from Kate Davenport QC [Senior Counsel for the appellants] to the Clerk of the Privy Council asking for the costs order to be fixed.
>
> In view of the lapse of time since I was last asked to deal with this matter, I would be grateful if you would let me know the current position from your perspective. If you have not received Mr Scott's 5 February 2017 response, please let me know, and I will arrange for the Registrar to courier the reply and the accompanying documents to you.

[4] Re-dated from 19 February 2018

[22] Mr Holmes advised the following day that he had received no communications from Mr Scott and he had not accepted the proposals to which the letter referred. His reply is also **attached** to this decision.

[23] The then position was summarised in a letter to both parties of 11 June 2018 and a copy of that is likewise **attached**.

[24] The joint letter of 19 June 2019 from the Chief Justice was the response.

[25] Mr Holmes' reply of 23 July 2019 did not dispute the correctness of the 19 June letter, but Mr Scott replied on 4 July 2019 with a lengthy email (copy **attached**) which summarised the complainants' position in the following terms:

> Therefore to recap:
>
> a) Mr Holmes first raised the question of an apology, and other action and demands in his 27 January 2016 (sic 2017) letter to His Honour.
>
> b) These we answered in a letter to His Honour on 05 February/03 March 2017 (an extension having been granted).
>
> c) His Honour advised ourselves and Mr Holmes it was not his intention at that time to forward that letter to Mr Holmes.
>
> d) Mr Holmes confirmed his acquiescence in that decision in his letter to His Honour dated 20 February 2018 meanwhile noting he was still awaiting responses to some of his demands when in fact those response were contained in our 03 March letter which he had agreed be not forwarded to him, and
>
> e) Mr Holmes was further apprised of the fact that the several matters he wished answered had been answered in our 05 July 2018 email as was our alleged failure to act on contacting my brother in the UK.
>
> f) On the evidence then it would appear that while Mr Holmes had been informed that his various complaints of inaction on our part were not in fact outstanding that it would appear as if he almost preferred to remain uninformed. Perhaps that suited a developing, longer term strategy of justifying withdrawal from any further effort as has now emerged because all he had to do was to ask His Honour for those responses.

[26] There, as the 19 June 2019 letter said, the complaint essentially lies.

[27] There are, as noted, two aspects to the complaint: the failure to have the costs award to the successful appellants in [2012] UKPC 34 quantified by the Privy Council and, necessarily consequential on that, failure to obtain payment.

[28] As to the first of those issues, it is clear that Mr Holmes did not professionally misconduct himself in that matter in a way which attracts a finding that he was in breach of s 15(2).

[29] Following delivery of the judgment, he made reasonable efforts to persuade counsel for the respondents to engage in a discussion about costs. That was unsuccessful because of a lack of reply. He then, with counsel, made reasonable efforts to have the Privy Council fix the costs, but for some unexplained reason neither their Lordships or the Privy Council Office have moved to resolve the matter on the application to fix costs out of time despite visits and correspondence in the meantime.

[30] Those actions on Mr Holmes' part are not shown to amount to negligence or incompetence of such a degree or frequency as to reflect on his fitness to practice nor such is or bring the legal profession into disrepute. They are not actions which would reasonably be regarded as "disgraceful or dishonourable" by other lawyers but merely actions which number amongst the difficulties of practising law only to have those efforts frustrated by others.

[31] Because it must be consequential on a finding against Mr Holmes on the first limb of the complaint, it follows that the second limb is also not made out as a case of professional misconduct.

[32] Even though Letters of Administration of the estate have now been granted, the estate of the respondent was insolvent and may still be. It is clear from the exchange of correspondence between the lawyers that the estate was unlikely ever to be cooperative in quantifying the costs award so, even if the respondents had the means to pay, the only way of enforcing payment was to use the Court's processes to enforce the Privy Council judgment on costs but, as mentioned, no judgment has ever been issued. Enforcement was therefore impossible and, whether or not there

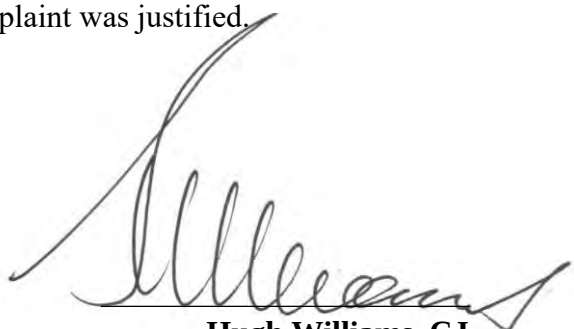
may be a means of enforcing any judgment by way of charging orders, that is not open until the costs judgment is quantified and is, in any event, outside the ambit of the present complaint of professional misconduct.

[33] Both limbs of the complaint having been dismissed, the complaint itself is dismissed.

[34] Whether or not Mr Holmes actions might found a claim by the appellants for professional negligence is similarly not within the ambit of this decision and the dismissal of the professional misconduct complaint is not intended to offer any comment on that possibility, or the likelihood of its success.

[35] In closing, it is acknowledged that what has occurred since the successful outcome of the appeal has been an unhappy experience for all concerned. Not only are both counsel who appeared owed several thousand dollars by way of unpaid fees, but the successful appellants/complainants are also out of pocket by several thousand dollars for unpaid disbursements. That is a most unfortunate outcome, but not one capable of being rectified within a complaint of professional misconduct.

[36] For completeness, it should be recorded that the complainants at one stage put forward a proposal for payment of a sum of money by Mr Holmes in settlement. For the reasons set out in the Chief Justice's letter of 11 June 2018, any such compromise would be beyond the powers given the Chief Justice by s 20 and in any event would depend on the Chief Justice being satisfied either of Mr Holmes' being guilty of professional misconduct – obviously not open in the circumstances of the complaint's dismissal – or finding that the complaint was justified in the circumstances. In view of the possibility that the disputed between these parties may endure, the Chief Justice is not prepared to make a finding that, as a complaint of professional misconduct, the making of this complaint was justified.



Hugh Williams, CJ

CHIEF JUSTICE OF THE COOK ISLANDS
TE TANGO TUTARA O TE TURE
MINISTRY OF JUSTICE

PO Box 111, Avarua, Rarotonga, Cook Islands | Telephone +682 29410 | E-mail: offices.justice@cookislands.gov.ck

19 June 2019

Mr Ross Holmes
Auckland
NEW ZEALAND Email: Ross@rossholmes.co.nz

Mr John and Mrs Tara Scott
PO Box 197
Rarotonga
COOK ISLANDS Email: escapa@muribeach.co.ck

Kia orana Mr Holmes, e kia orana Mr and Mrs Scott

RE: Complaint

Mr Scott is thanked for his letter of 7 May 2019 responding to my letter of 23 April endeavouring to bring this complaint up-to-date.

My thanks are also due to Mr Holmes for his letter of 1 June 2019 replying to mine of 24 May 2019.

Thank to you both, too, for sending the numerous documents which accompanied your replies. As it turns out I already had copies of nearly all those documents, but I can understand your prudence in resending them to ensure I had a complete record of the complaint given the unfortunate procedural history of this longstanding matter.

As you are both aware, the main thrust of Mr and Mrs Scott's complaint of 15 September 2016 against Mr Holmes was that he had professionally misconducted himself in the discharge of his professional responsibilities to them by failing, first, to get the Privy Council to fix the costs payable to Mrs Scott and her fellow appellant following their successful appeal, culminating in the Privy Council's judgment of 22 October 2012, and, secondly, in failing to obtain payment of the costs due to the appellants.

Mr Scott's complaint on behalf of the appellants was, together with a number of accompanying documents and further letters of clarification, referred to Mr Holmes in a letter dated – though probably erroneously – 8 November 2016. He responded with a 20 page letter and numerous accompanying documents, the letter being dated 27 January 2016 but actually being forwarded on 27 January 2017.

There, in essence, the matter remains.

As to the first limb of the complaint, despite a number of efforts by both sides to the complaint to have the Privy Council quantify the order for costs, for some unexplained reason quantification has never occurred.

Therefore the amount payable to the appellants has never been fixed so the respondents have never been advised of the sum for which they were liable, irrespective of whether they could have paid the award.

Thus enforcement of the costs order has never been possible and, without quantification, the costs payable to the appellants will never be able to be enforceable.

It may be pertinent to add that, although the costs payable on the associated appeal, ***Baudinet v Tavioni***, have long since been fixed and paid, since the parties were different, it may be questionable, as a matter of law, that the costs in one appeal could have been set off against costs in the other.

As Mr Scott said in the original complaint, the second aspect of the complaint has been complicated by the respondent's death on 19 December 2013.

Before that, a number of efforts had been made to try to persuade her solicitor, Mrs Browne, to engage on quantification of the costs question, but those efforts met with no response.

Since then, namely on 18 January 2017, Letters of Administration of the respondent's estate have been granted but Mr Mason, acting for the estate, advised Mr Holmes, as set out in his email to Ms Davenport QC of 16 June 2017, that:

> "I have made no progress with Brian Mason, the lawyer acting for the estate of Mene Merapi Taripo. His advice to me orally was that the liabilities of the estate exceeded its assets, as she had not paid tax on the goodwill received by her on the sale of multiple leases, and Cook Islands Revenue Management had or would be assessing the estate as being liable for a massive tax bill.
>
> Brian's comment to me is that if we got an order for costs against all the landowners then the appellants could get a charging order against land rentals and recover costs in that way"

following which Mr Holmes referred to Section 386 of the Cook Islands Act 1915.

It may perhaps be the case that the tax amnesty announced by the Government since 18 January 2017 might possibly have improved the financial position of the respondent's estate but, unless that is the case, what seems to be the parlous condition of the estate remains the situation and accordingly, even if the costs award in favour of the appellants could be quantified, enforcement and therefore payment would only be likely to result if a charging order against land rentals could be obtained under s 386, and if those rentals proved to be capable of producing the quantified figure.

There have been suggestions during the lengthy history of this matter that, were the costs order to be quantified, payment might result from that avenue, but no detail concerning that possibility has been provided.

I should add that I have no information as to the details of the tax amnesty, or whether it affects the respondent's estate's financial position. On a complaint of professional misconduct, it is for me to decide if the matters complained about constitute professional misconduct, not how the possible misconduct might be overcome.

For completeness, it should be added that Mr Scott, in the original complaint, suggested that the interval between delivery of the Privy Council's judgment on 22 October 2012 and the respondent's death on 19 December 2013 "should have been ample time for everything to have been settled" but, apart from seeing the emails in which Mr Holmes unsuccessfully endeavoured to persuade Mrs Browne to engage on the costs issue during that period, there is nothing on the complaints file to support Mr Scott's suggestion.

The question of costs on the successful appeal has been a most unfortunate matter from all points of view – not only has Mr Holmes' considerable fees and those of Ms Davenport QC remained unpaid, but the Scotts have been unable to recover their significant disbursements – but there seems little chance, without a quantified costs order capable of producing a charging order which can be met, that those unhappy states of affairs are likely to be overcome.

Again for completeness, in his February-March 2017 letter Mr Scott suggested that "Mr Holmes and his co-counsel be made responsible in a tangible way for their mismanagement and dilatoriness of this entire matter". He proposed a means by which that might be achieved, but, as I pointed out in my letter to both parties to this dispute of 11 June 2018, s 20 of the Law Practitioners' Act 1993-94 severely limits the Chief Justice's power to make such an order, even if the circumstances were adjudged to justify the same.

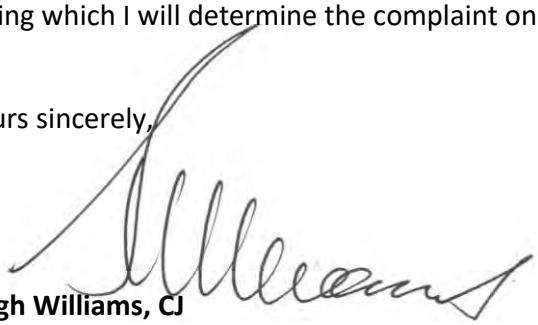
To ensure all addressees are fully informed a copy of my 23 April 2019 letter is attached as is Mr Scott's reply of 7 May 2019 (with the 10 attachments omitted).

Similarly, I attach copies of my letter of 24 May 2019 to Mr Holmes and his 1 June 2019 reply, again without the accompanying documents.

In relation to the 1 June 2019 letter, it is for Mr Scott to comply or not as he chooses with paragraphs 11-14.

I invite the addressees of this letter to advise me if they consider its contents seriously incorrect, failing which I will determine the complaint on the material currently available to me.

Yours sincerely,



Hugh Williams, CJ

Enc.

CHIEF JUSTICE OF THE COOK ISLANDS
TE TANGO TUTARA O TE TURE
MINISTRY OF JUSTICE

PO Box 111, Avarua, Rarotonga, Cook Islands | Telephone +682 29410 | E-mail: offices.justice@cookislands.gov.ck

11 June 2018

Mr John and Mrs Tara Scott
Box 197
Rarotonga Email: escapa@muribeach.co.ck

Mr Ross Holmes
Auckland
NEW ZEALAND Email: Ross@rossholmes.co.nz

Kia Orana Mr and Mrs Scott e Kia Orana Mr Holmes

RE: Complaint

Leaving aside, for the moment, all that has preceded this letter, you will recall my advising you previously that I had received a letter from Mr and Mrs Scott dated 20 February 2018 concerning this complaint and proposing a monetary means of resolving it and that I declined to send a copy of that letter to Mr Holmes until I had ascertained from him the current position concerning his efforts to have the costs in Mrs Scott's successful the appeal quantified by the Privy Council, and paid.

Following my further enquiry, on 8 June 2018 (NZ Time) I received a copy of Mr Holmes's letter to me of 20 February 2018 (but was the first occasion on which I had seen that letter).

It would appear that the administrative difficulties which have bedeviled this matter (and others) over recent times have continued down to the present and, to the extent the Court is responsible for those problems, I express my regret to the parties.

Though each of the addressees will have a copy of one of the letters, for completeness I enclose copies of both. I also enclose the relevant portion of the email chain referred to by Mr Holmes.

As far as the fixing of the appeal costs by the Privy Council is concerned, the enclosed material would appear to show that the Privy Council Office has made no progress towards fixing the costs in the 16 months or so since Ms Kate Davenport QC raised the matter with them. That may be because they have communicated with Mrs Browne and she has failed to reply or that the Privy Council Office has not acted on the matter.

Though unfortunate, if the former is the case, it may be the position that Mrs Browne is uninterested in replying to enquiries from the Privy Council as she lost a client prior to the client's death and in any case, as the correspondence from Mr Mason shows, the deceased's estate was insolvent at her death.

Whether or not the estate of the deceased was insolvent at about the time the Privy Council issued its judgments – on 22 October 2012, nearly six years ago – may be a matter of conjecture but it seems reasonably plain that, were the costs to be quantified at this point and enforcement of the order sought, other than by way of the possible attachment orders referred to by Mr Mason, the judgment is likely to be barren.

Mr Holmes will note Mr and Mrs Scott's suggestion towards the end of their letter of 20 February 2018.

Mr Holmes's comments on Mr and Mrs Scott's proposal are solicited but I should point out to Mr and Mrs Scott that, apart from civil litigation for professional negligence, within the complaints jurisdiction, there are only two avenues by which a practitioner can be ordered to pay compensation.

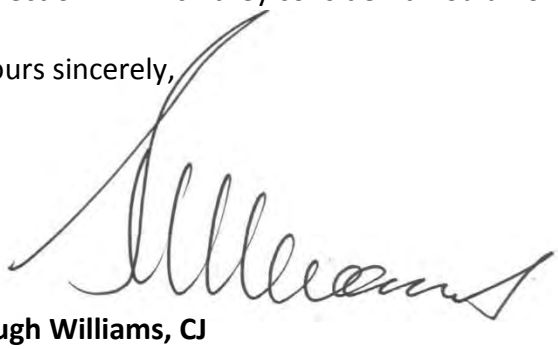
The first is pursuant to s 20(e) of the Law Practitioners Act 1993-94. That empowers the Chief Justice to order a practitioner to pay compensation, but the power only arises following a finding that the practitioner has been guilty of professional misconduct and is limited to $5,000.

The alternative route appears in s 20(2) which gives the Chief Justice power to – in this case, award compensation of up to $5,000 even without a finding of professional misconduct but only where the "Chief Justice is of the opinion having regard to the circumstances of the case that the making of the complaint was justified".

I include that information in this letter, not to indicate that I am currently minded to make any order for compensation, but to advise Mr and Mrs Scott of the statutory limits of the Chief Justice's power in that regard.

I fully realise that a considerable number of other issues are raised in the attached correspondence, and that which preceded it, but the purpose of this letter is to endeavor to focus on the position between the complainants and Mr Holmes and invite each to indicate the direction in which they consider it would now be appropriate for this matter to proceed.

Yours sincerely,



Hugh Williams, CJ

Encl.

Dallas Holford

From: John Scott <escapa@muribeach.co.ck>
Sent: Wednesday, 3 July, 2019 3:27 PM
To: Claudine Henry-Anguna; Dallas Holford
Cc: Liana Scott
Subject: RE: Letter to Messrs Holmes & Scott dated 19Jun2019
Attachments: CJ's 13 March Lr in reply to mine 3 March 2017.pdf; RE: letter to Mr Mrs Scott and Mr Holmes dated 11Jun2018

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Civil/Criminal

Kia Orana Claudine and Dallas
Thank you Claudine for that response and the CJ for the extension of time.

I have now refreshed myself from my files and can report as follows:

As suspected the several issues raised by Mr Holmes, in paragraphs 11-14 of his letter of 01 June 2019 to His Honour, were fully answered in our letter to His Honour of 03 March 2017 which His Honour acknowledged on 13 March 2017.

Both my letter (without the many attachments) and His Honour's acknowledgment are attached herewith for good measure.

It will be noted in His Honour's letter of 13 March 2017 he mentioned that it was not intended, at that time, to forward a copy of our 03 March 2017 letter to Mr Holmes in view of the action we all understood Mr Holmes was taking to reactivate his attempts to have the Privy Council Office quantify the Order for Costs. Whether it has since I would not know but given the circumstances, and the continuing confusion whether Mr Holmes' various issues have been addressed, one might presume it has not.

Clearly Mr Holmes accepted that explanation of the CJ's because having also received from His Honour a copy of that 13 March 2017 letter he commented at paragraph 2 of his 20 February 2018 letter as follows:
Your Honour appears to have overlooked your letter of 13 March 2017 to Mr and Mrs Scott, a copy of which is attached, which detailed your Honour's reasons for not sending me a copy of Mr Scott's letter of 3 March 2017 and attachments. It is submitted that those reasons still apply.(my emphasis- namely to await the results of those further attempts).

The difficulty here is reconciling the aforesaid underlined statement with Mr Holmes' paragraph 12 (a) of his 01 June 2019 letter to His Honour. Therein he declares that, due to our failing to apologise, he no longer has any "obligation to pursue the costs matter further" such declaration coming some three (two) and half years after first mooting it in his still uncorrected dated letter of 27 January 2016 (sic 2017) that the further pursuit of a costs order was dependent upon that apology .

Mr Holmes' incorrect assumption that because we had failed to address the several issues (principally, an apology) he originally raised in his 27 January 2016 (sic 2017) constituted grounds for discontinuing further pursuit of the Costs Order is contradicted not only by our 03 March 2017 letter but by his and Ms Davenport's own actions. Ms Davenport's by her 13 February 2017 letter to the Privy Council and later on 6 November 2017 advising Mr Holmes that she had heard nothing from the Registrar of the Privy Council and asking whether she should "go and see them when I am in the UK next year". In his letter to your Honour of 20 February 2018 Mr Holmes confirmed at paragraph 6 that he had asked

Ms Davenport to visit the Registrar when she is next in London. Likewise in his 16 June 2017 report to Ms Davenport that he was examining the prospect of a charging order against the lands of the deceased Respondent- hardly actions of persons who had wiped their hands of further responsibility for want of the putative need for an apology.

The strange thing is that even though Mr Holmes was copied into my email of 5 July 2018 in which I had commented that the apology and other matters he was so concerned about in his paragraphs 53 (a),(b) and (c) of his 27 January 2016 (sic 2017) letter had all been answered in my 03 March 2017 letter, he is still insisting they had not, when in fact what he should have been doing was asking His Honour whether his attempts to have the Privy Council quantify the Order for Costs had reached the stage which altered his earlier agreement with His Honour withholding that letter from him and now warranted it being shared with him.

That same 5 July 2018 email (which I am also attaching) also dealt with another imagined failure of mine namely that I had not approached my brother in the UK to intercede with the Privy Council when in fact I had, as Mr Holmes well knows, because my brother's reply was attached to this email in which he was copied. The question then is not whether I "failed to promptly action the suggestion made in my letter of 20 February 2018" as alleged by Mr Holmes in paragraph 14 of his 01 June 2019 letter to His Honour but - in view of my brother clearly signally his availability - that Mr Holmes had failed to do anything about it.

Now, however, when our complaint continues to be a live issue, and the unresponsiveness of the Privy Council appears, from Mr Holmes' perspective, to have elevated the whole affair into something more complicated, and choosing still to maintain that he was unaware that we had in fact addressed every one of his bones of contention (of which he was informed in that 5 July 2018 email), that he is devising an exit strategy and seizing upon the absence of an apology as grounds to discontinue any further attempt, and by extension, accept any further responsibility in the matter. I would respectfully suggest to His Honour that position is untenable and should not be entertained.

Was that 3 March 2017 letter of mine to His Honour at any time re- considered for forwarding to Mr Holmes as the Costs Order failed attempts evolved?

Considering Mr Holmes and Ms Davenport combined have more than we to lose in financial terms, it would appear to us that playing this apology card is a cover to disguise the fact that the entire matter has been handled very badly by them, possibly even perceived by them now as beyond redemption, with such an admission being a far less appealing and defensible option than converting my not unreasonable conjecturing whether there had been some recoveries, of which I was unaware, into the full blown allegation of theft which is how Mr Holmes is conveniently characterising it.

Therefore to recap.
a) Mr Holmes first raised the question of an apology, and other action and demands in his 27 January 2016 (sic 2017) letter to His Honour.
b) These we answered in a letter to His Honour on 05 February/03 March 2017 (an extension having been granted).
c) His Honour advised ourselves and Mr Holmes it was not his intention at that time to forward that letter to Mr Holmes.
d) Mr Holmes confirmed his acquiescence in that decision in his letter to His Honour dated 20 February 2018 meanwhile noting he was still awaiting
responses to some of his demands when in fact those response were contained in our 03 March letter which he had agreed be not forwarded to him, and
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that it would appear as if he almost preferred to remain uninformed. Perhaps that suited a developing, longer term strategy of justifying withdrawal from any
further effort as has now emerged because all he had to do was to ask His Honour for those responses.

I wonder also whether it is a little unfair to attribute to Ms Davenport the role of equal contributor to this position. I have some sympathy for her in all of this as she may be getting seriously misjudged by association and presumption that while Mr Holmes is speaking for them both she, quite conceivably is not as apprised as she might be of the minutiae attending upon it.

As His Honour no doubt intends to forward this present correspondence to Mr Holmes would he, in the interests of fairness to Ms Davenport, consider including her in copy? If His Honour does not regard that as appropriate, Ms Davenport possibly being cast in the junior counsel role so to speak, would he have any objection my doing so because it is quite possible that while conjoined in Mr Holmes' many assertions, demands and ultimatum, being better informed, she may not necessarily subscribe to them?

I have no personal quarrel with Ms Davenport and I am concerned lest she be unjustly impugned. To avoid that, she should at least be privy to my 3 March 2017 letter to His Honour, its attachments, and the other attachments herein, because the misgivings I flagged there that I had of Mr Holmes' professionalism when it came to fees and cost recovery management appear to be the genesis to his contrived sense of outrage. I wonder whether being better informed, she might have a different view of the matter because as things currently stand Mr Holmes is speaking for both of them.

Yours faithfully
John M Scott
for self and Mrs Scott