



On 23 May 2008, the Court of Appeal handed down its judgment in the matter of *Legal Services Commissioner v Dempsey* [2008] QCA 122. The matter concerned the interpretation of Div 2A of Pt 4B of the *Queensland Law Society Act 1952* (specifically, ss.48IB – 48IC of that Act) – the so-called ‘50/50 rule’ which caps solicitors’ fees in speculative personal injury matters.

The effect of the Court of Appeal’s decision is that:

- the ‘D’ (disbursements) component of the “50/50” formula includes all outlays paid from funds held in a law practice’s trust account;
- it does not matter that the source of those funds is a litigation lender, or the client personally;
- the ‘D’ component also includes amounts paid by the law practice on the client’s behalf and which must be reimbursed to the law practice;
- the ‘D’ component does not however include interest on the outlays (e.g. interest charged by a litigation lender);
- the maximum amount of fees prescribed by the legislation includes GST; and
- that maximum amount applies regardless of a provision in a client agreement or costs agreement obliging the client to pay GST.

In other words:

- all outlays are ‘disbursements’ whether paid from general or from trust, and whether the funds are supplied by the client, the firm or a third-party lender; and
- the 50% ‘cap’ includes GST.

The Commissioner draws the profession’s attention to the decision and requires all law practices to review their files and refund clients any amounts charged in breach of the legislation since 6 November 2003 (the date Div 2A of Pt 4B of the *Queensland Law Society Act* came into effect).

The Commissioner is considering issuing guidelines to assist the profession to deal with issues surrounding billing in speculative personal injury matters and to outline his position in relation to breaches of the legislation.

It should be noted that while the Court's decision concerned the provisions of the (now repealed) *Queensland Law Society Act*, the Commissioner believes that the principles enunciated are equally applicable to matters where s.347 of the *Legal Profession Act 2007* applies.