

Solicitors Professional Standards

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Court of Appeal Upholds Decision Regarding Application of Section 48IC of Queensland Law Society Act 1952

The Legal Services Commissioner made an application to the Supreme Court seeking declarations as to the proper construction of Section 48IC of the now repealed *Queensland Law Society Act 1952* for the purpose of determining whether a practitioner had overcharged two (2) former clients.

On 25 September 2007, Chesterman J made orders to the following effect as the result of that application (*Legal Services Commissioner v. Dempsey* [2007] QSC 270):-

1. A declaration that disbursements and outlays paid from the practitioner's trust account in the prosecution of their actions were disbursements as defined by Section 48IC of the *Queensland Law Society Act 1952*.
2. A declaration that the maximum amount of fees that the practitioner was entitled to charge his clients in accordance with the formula specified in Section 48IC of the *Queensland Law Society Act 1952* included GST.
3. A declaration that the respondent was not entitled to charge his clients, or deduct from their settlement monies, any amount in respect of GST he may have been liable to pay on the supply of legal services to those clients.

The practitioner lodged an appeal against these Orders. On 23 May 2008, the Court of Appeal (*Legal Services Commissioner v. Dempsey* [2008] QCA 122) upheld the Orders made by Chesterman J.

Background

Section 48IC effectively capped the amount that could be paid to a practitioner or firm in a speculative personal injury matter to 50% of the net damages available after refunds and the payment of disbursements.

The clients obtained litigation loans from an independent litigation funder for the purpose of paying the disbursements incurred in their speculative personal injury matters, the practitioner agreeing that he would only charge professional fees to the clients if their actions were successful.

The money advanced by the litigation funder was paid in to the practitioner's trust account.

Disbursements Declaration

The definition of disbursements in Section 48IC was that it was the total amount of disbursements the client must pay, or reimburse, to the practitioner or firm in relation to the speculative personal injury matter (underlining has been added for emphasis).

It was the practitioner's position, after having taken advice from Senior Counsel, that a disbursement was only a disbursement for the purpose of Section 481C if it was paid by the practitioner or firm from the practitioner or firm's own funds.

Accordingly, in calculating the maximum amount that could be paid to the practitioner pursuant to Section 481C, the practitioner did not deduct from the gross proceeds, amounts paid for disbursements that were funded by the litigation lender.

Chesterman J ordered and the Court of Appeal upheld that a disbursement is a disbursement for the purpose of Section 481C, irrespective of how it was funded.

GST Declarations

Chesterman J and the Court of Appeal upheld that:-

- the *GST Act* imposes on the supplier of goods and services (the practitioner) the obligation to pay GST from the amount received for the supply of the goods and services;
- Section 481C capped the amount payable for the supply of the services to 50% of the net proceeds;
- Consequently the practitioner was obliged to pay the GST from the 50% of the net proceeds payable to him for professional fees.

Present Position

The *Legal Profession Act 2007* ("LPA") commenced on 1 July 2007. Section 347 of the LPA replaced Section 481C.

The declarations are consistent with Section 347 of the LPA, which clearly provides that a disbursement is a disbursement irrespective of who pays it and the statutorily capped amount is inclusive of GST.