SUPREME COURT OF QUEENSLAND

CITATION:	*Legal Services Commissioner v Dempsey* [2007] QSC 270
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **PAUL ANTHONY DEMPSEY** (respondent)
FILE NO:	4250 of 2007
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	25 September 2007
DELIVERED AT:	Brisbane
HEARING DATE:	10 September 2007
JUDGE:	Chesterman J
ORDER:	**1. A declaration that in respect to Katherine Wickham and Mark Curlewis, disbursements and outlays paid from the respondent's trust account in the prosecution of their actions were disbursements as defined by s48IC of the *Queensland Law Society Act 1948* (Qld);** **2. A declaration that the maximum amount of fees that the respondent was entitled to charge Katherine Wickham and Mark Curlewis in accordance with the formulae specified in s48IC of the Queensland Law Society Act 1948 included any tax payable pursuant to the *A New Tax (Goods and Services Tax) Act* 1999 (Cth);** **3. A declaration that the respondent was not entitled to charge Katherine Wickham or Mark Curlewis or deduct from their settlement monies, any amount in respect of Goods and Services Tax he may have been liable to pay on the supply of legal services to those clients.**
CATCHWORDS:	PROFESSIONS – SOLICITOR – TRUST ACCOUNTS – MONEY HELD IN TRUST – FEES - where the respondent solicitor was acting for clients on a contingency fee basis – where the respondent required the clients to take out loans to cover any outgoings in the course of acting for the clients – where those funds were paid directly into the respondent's trust account and used to pay any disbursements – where the relevant legislation limited the amount of professional fees a solicitor could charge by a formulae which deducted the

amount of disbursements from a clients settlement figures before taking a percentage of that figure as a maximum amount permitted to be charged as professional fees – where the respondent sought to argue that as the outgoings were paid directly from loan monies paid into the trust account and not paid to the respondent as reimbursement those monies were not disbursements under s 48IC *Queensland Law Society Act 1948* (Qld) – whether those funds were disbursements – whether those funds should have been taken into account to lower the maximum amount chargeable – meaning of "disbursements"

TAXATION GOODS AND SERVICES TAX - Where the respondent's legal service attracted the obligation on behalf of the respondent to pay Goods and Services Tax – where it is common practice to pass the amount of the tax down to client by including an equivalent amount in the amount for professional fees - whether the *New Tax (Goods and Services Tax) Act 1999* (Cth) authorised the respondent to charge his clients more than amount allowed under the formulae provided by the Queensland Law Society Act – whether the maximum amount chargeable under the Queensland Law Society Act included any GST payable.

A New Tax (Goods and Services Tax) Act 1999 (Cth), s 9.5, s 9.10, s9.40, s 9.70
Queensland Law Society Act 1948 (Qld), s 48A, s 48B, s 48IA, s48IB s 48IC

Attorney General (NSW) v Brewery Employees Union of New South Wales (1908) 6 CLR 469, applied
Re Dole Ex Parte Peak Downs Copper Mining Co (No.2) (1873) 4 QSCR 22, applied
Re Remnant [1849] 50 ER 949, applied

COUNSEL: Mr W Soffronoff QC with him Ms J Rosengren for the applicant
Mr K.C. Fleming QC with him Mr C Jennings for the respondent

SOLICITORS: Legal Services Commission for the applicant
Dempseys Lawyers for the respondent

[1] The applicant seeks declarations as to the proper construction of s 48IC of the *Queensland Law Society Act* 1948 ('the Act') for the purposes of determining whether the respondent has overcharged two former clients.

[2] The respondent was and is the sole principal of a firm, Dempsey Solicitors, also known as Dempseys Your Lawyers, which engaged in legal practice in Townsville. In October 2002 the respondent was retained by Katherine Anne Wickham to act on her behalf in a speculative claim to recover damages for personal injuries she claimed to have sustained at work. In about the middle of 1999 the respondent had been retained by Mark Curlewis to act on his behalf in a speculative claim to

recover damages for personal injuries he sustained at home. He was electrocuted while crawling in the ceiling cavity. I shall sometimes refer to Ms Wickham and Mr Curlewis as 'the clients'.

[3] Both claims were complicated. Neither was a straightforward claim against an insured defendant. The existence and extent of Ms Wickham's injuries were disputed. The identity of the tortfeasor who caused Mr Curlewis' injuries was obscure.

[4] The respondent conducted both claims professionally, competently and honestly and won a settlement for both clients. The fees charged, however, were substantial and the clients recovered considerably less by way of damages than the respondent received by way of professional fees.

[5] The applicant claims that the respondent charged the clients and recovered from them more than s 48IC of the Act permitted. He seeks declarations to vindicate his opinion.

[6] Section 48IA of the Act defines a 'speculative personal injury claim' to be one for damages for personal injury where the right of a practitioner to charge and recover from a client for work done is made dependent on the client's success in pursuing the claim. Both Ms Wickham's and Mr Curlewis' claims were of that type.

[7] Section 48IB provides that the purpose of Division 2A of the Act was to provide for the maximum payment for a practitioner's conduct of a speculative personal injury claim.

[8] Section 48IC then sets out a formula for deriving the maximum amount of fees that a practitioner may charge and recover 'for work done in relation to a speculative personal injury claim'. The amount:

> 'must not be more than the amount worked out using the formula –
>
> [E – (R + D)] x 0.5
> Where –
>
> 'E' means the amount to which the client is entitled under a judgment or settlement.
>
> 'R' means the total amount the client must, under an Act, or a law of the Commonwealth or another jurisdiction, or otherwise, refund on receipt of the amount to which the client is entitled under the judgment or settlement.
>
> 'D' means the total amount of disbursements the client must pay, or reimburse, to the practitioner or firm in relation to the speculative personal injury claim.'

[9] The Application concerns the meaning of determinant D in the algebraic expression. The parties disagree about what constitutes disbursements for the purposes of performing the calculation of the maximum amount of fees permitted.

[10] The dispute arises because neither Ms Wickham nor Mr Curlewis could afford to pay disbursements necessary for the proper prosecution of their actions. The respondent made it clear when agreeing to accept their retainers on a speculative basis that he could not afford to pay disbursements. The arrangement made was that the clients would borrow money from a litigation lender and apply the loan monies to pay disbursements.

[11] The respondent and Ms Wickham made a client agreement dated 7 November 2002. Clause 3 provided (in part):

> 'Fees – How Calculated
>
> Speculative Agreement
> The firm agrees to perform the work set out in Clause 1 of this client agreement on the basis that if the case is won then the client shall pay all the firm's professional fees and all costs incurred, but should the case not be won then the client shall not be liable to pay the firm anything at all for either professional fees or costs incurred.
>
> Should the client not be able to fund the outlays and costs associated with their case, then they should acknowledge that the firm is not able to carry such costs, so to propagate their case it will be necessary for the client to enter into a litigation loan to fund all the costs set out in Clause 4 below.'

[12] Clause 4 provided:

> 'Costs
> In addition to the professional fees set out in Clause 3, the client will pay all costs properly incurred by the firm. These will include:
>
> (i) Services the firm (or an associated company) uses or supplies on the client's behalf …
>
> (ii) Costs to be incurred on the client's behalf:
>
> This may include:
>
> Barristers' fees
> Search fees
> Courier fees
> The cost of expert consultants, medical reports, telephone charges, filing and lodgement fees, banking charges, government revenue, postage, process servers and investigators, agents' fees including interstate lawyers, external consultants, travel and accommodation, witness fees, transcript fees, the cost of doctors attending a trial, witnesses' fees and expenses.'

[13] Clause 7 provided:

> 'Accounts

(i) All accounts submitted … will be in the form attached …

(ii) Accounts will be issued monthly.

(iii) Accounts will be paid immediately upon receipt of settlement monies.

(iv) Upon the introduction of GST you will be required to pay all GST payable on our fees and the appropriate amount will be added to your account which will be in a form sufficient for you to claim input credits if you are permitted to do so.'

[14] If there was a client agreement between the respondent and Mr Curlewis it was not put into evidence.

[15] As I said neither Ms Wickham nor Mr Curlewis could pay for the outlays and costs associated with their claims. Accordingly they both entered into written loan agreements styled 'Litigation Loan Agreement' with a company, Bevtech Pty Ltd ('Bevtech'). Between March 2003 and January 2005 Bevtech lent Ms Wickham $9,000. Between March 2000 and December 2003 it lent $27,200 to Mr Curlewis.

[16] The litigation loan agreements were in identical terms. They recited that the clients had retained the respondent to conduct litigation to recover damages for personal injuries on a speculative basis, and that:

> 'In conducting such litigation, (the respondent) has and/or will incur outlays on behalf of the litigant including but not limited to, filing fees, counsel's fees, the cost of expert reports, travel, accommodation and witness costs for witnesses and potential witnesses, postage, photocopying and facsimile charges (the "outlays").'

The agreements then provided:

'1. The litigant … authorises the lender to pay … to the credit of (the respondent's) trust account and to debit that amount … to the litigant's account pursuant to this agreement.

2. The litigant agrees to pay … interest at the rate of 18 per cent per annum …

3. …

4. The litigant further agrees to pay to the lender the whole of the amount outstanding … forthwith after the receipt of the proceeds of the litigation upon the successful completion of the litigation.

5. … Successful completion … occurs when the litigant becomes entitled, pursuant to a judgment compromised or

> otherwise to receive payment of at least (the amount of the advance) …
>
> 6. …
>
> 7. For the purposes of better securing the litigant's obligation hereunder the litigant hereby charges the proceeds of such litigation with repayment of his indebtedness to the lender … and irrevocably directs (the respondent) to pay to the lender such amount out of the said proceeds.'

[17] All advances made by Bevtech pursuant to the litigation loan agreements were paid into the respondent's trust account to the credit of the respective client. During the conduct of speculative personal injury claims, including those on behalf of Ms Wickham and Mr Curlewis, disbursements were paid from the respondent's trust account 'where there were sufficient funds held in the … trust account' for that purpose. When the monies lent by Bevtech were exhausted, having been applied towards the payment of outlays, another litigation loan agreement would be made for the advance of further funds.

[18] When a claim came to a successful conclusion and judgment or settlement monies were payable to the client Bevtech would issue an interest statement to the borrower showing the amount of interest accrued due under the loan agreements.

[19] On 17 May 2005 the claim brought on behalf of Ms Wickham settled for the sum of $95,000. Ms Wickham received $14,102.39. The respondent was paid $33,000 by way of fees and GST on those fees.

[20] The respondent applied the s 48IC formula E – (R + D) x 0.5 as follows:

> E = $95,000
> R = $23,547 (being $19.035 to Centrelink and $4,512 to HIC, i.e. $9,500 less a refund of $4,988 which HIC paid direct to Ms Wickham)
> D = $ 7,041 (disbursements not paid from litigation loans)
>
> ∴ [$95,000 – ($23,547 + $7,041)] x 0.5
> [$95,000 – 30,588] x 0.5
> $64,412 x 0.5
> = $32,206

[21] The settlement sum paid to the respondent's trust account after the deduction of statutory refunds was $65,719.87. From that sum the respondent paid:

- $30,000, for his own professional fees;
- $3,000, for the GST on the fees;
- $16,006, for disbursements ($7,041 paid from the settlement sum and $8,965 paid from litigation loans);
- $2,353.29, for interest on litigation loans;
- $258.19, for GST on particular disbursements.

The balance of the settlement sum held by the respondent, *viz* $14,102.39, was paid to Ms Wickham. Presumably, she also received the refund due to her by the HIC, *viz* $4,988.

[22] On 5 April 2004 Mr Curlewis' claim settled for an amount of $220,000. After deduction of statutory refunds $202,904.75 was paid into the respondent's trust account on 26 May 2004. Mr Curlewis received $45,985.12 and the respondent was paid $88,755.17 in fees and GST on those fees.

[23] The respondent applied the s 48IC formula as follows:

E = $202,904.75
R = $0.00
D = $29,349.56 (disbursements not paid by litigation loans)

∴ [$202,904.75 – ($0.00 + $29,349.56)] x 0.5
$173,555.19 x 0.5
= $86,777.595

[24] From the settlement sum of $202,904.75 the respondent paid the following amounts:

- $82,000, for the respondent's professional fees;
- $6,755.17, for the GST on the respondent's professional fees (after 30 June 2000);
- $58,049.56, for disbursements ($29,349.56 from the settlement sum and $28,700 from litigation loan funds);
- $10,114.90, for interest on litigation loans;

The balance was paid to Mr Curlewis, *viz* $45,985.12.

[25] Without the application of s 48IC the client agreements with Ms Wickham and Mr Curlewis would have entitled the respondent to recover more by way of fees than he did charge. The section imposed a limit on the fees that would otherwise have been chargeable.

[26] The applicant claims that the respondent did not properly apply the formula found in the section and has, consequently, overcharged both clients. There are three points of contention:

1. What is the proper amount to include as disbursements, determinant D, in the algebraic expression?

2. Should interest paid pursuant to the litigation loan agreements be included as a disbursement?

3. Was GST payable by the client in addition to the maximum fees derived by the application of the formula?

[27] It is apparent from the accounts rendered by the respondent that in applying the formula he did not subtract from the settlement monies any sums by way of disbursements which were paid from the proceeds of any of the litigation loan agreements. The result is, of course, that the amount that could be halved so as to

provide the maximum amount chargeable by way of fees was larger than it would have been had the disbursements been subtracted from the settlement monies before the division.

[28] The question to be answered is whether disbursements paid for from the monies borrowed from Bevtech and deposited into the respondent's trust account were disbursements for the purposes of s 48IC. The monies were expended in paying fees to counsel and expert witnesses and the like. The respondent himself described the payments in his statements of account to his client as 'disbursements'. The respondent contends that because they were paid from monies in his trust account they were properly excluded from determinant D in the statutory formula.

[29] The respondent's argument focuses particularly on the phrase 'to the practitioner' in the definition of D. Monies paid by the client into the practitioner's trust account are not, the respondent submits, paid to the practitioner and even if paid to enable the practitioner to defray the cost of disbursements incurred in the conduct of the client's claim are not disbursements for the purposes of s 48IC. The submission was put in these terms:

> '… Money paid into the trust account of a practitioner … and held and used in payment of disbursements in the course of litigation is not a payment or reimbursement *to the practitioner or firm*. Such payments are made *to* the relevant provider of goods or services, e.g. to counsel or to a doctor. The solicitor acts as a mere trustee making payment. The D component only applies if the solicitor is the payee, i.e. where payment is made in satisfaction of a debt due by the client to the solicitor.
>
> The disbursements … in s 48IC are those … paid by, or to be paid by, or incurred by, the practitioner … in the course of the speculative personal injury claim and which the solicitor has "no prospect of being paid … except by virtue of a judgment or order against the other party to the proceedings". Those are the disbursements which must be paid or reimbursed *to* the practitioner …'

[30] The enduring definition of 'disbursements' is that given by Lord Langdale MR in *Re Remnant* [1849] 50 ER 949. In an endeavour to obtain a coherent statement of principle the Master of the Rolls took the advice of the Taxing Masters as to what constituted a professional disbursement. They advised (50 ER 953):

> 'That such payments as the solicitor in the due discharge of the duty he has undertaken is bound to make, so long as he continues to act as solicitor, whether his client furnishes him with money for the purposes or with money on account, or not: as, for instance, fees of the officers of the court, fees of counsel, expense of witnesses etc. …
>
> We think also, that the question whether such payments are professional disbursements or otherwise, is not affected by the state of the cash account between the solicitor and the client; and that (for instance) counsel's fees would not the less properly be introduced into the bill of costs as a professional disbursement, because the client may have given money expressly for paying them; …'

[31] Having accepted their opinion, Lord Langdale went on (954):

> 'And it seems to me a very reasonable and proper rule, that those payments only, which are made in pursuance of the professional duty undertaken by the solicitor, and which he is bound to perform, or which are sanctioned as professional payments, by the general and established custom and practice of the profession, ought to be entered or allowed as professional disbursements in the bill of costs.'

[32] *Remnant* has been accepted as a correct exposition. See *Weiss v Clayton Utz* (1993) 114 FLR 159; re *Doyle; ex parte Peak Downs Copper Mining Co (No 2)* (1873) 4 QSCR 22.

[33] The nature of a disbursement was succinctly explained by Dal Pont, *Law of Costs*, (at p 4):

> 'A "disbursement" is a payment made on behalf of a client. … Essentially disbursements refer to money which, for the purposes of the … proceeding, have been actually paid out to other people, such as witnesses, counsel, professional advisers and so forth, and so can be distinguished from "costs" … that are intended to cover remuneration for the exercise of professional legal skill by a lawyer. … Expressed another way, these types of disbursements … are money paid on behalf of a client of a lawyer to a third party that can properly be included in the bill of costs.'

[34] So understood, the payments which the respondent made to counsel and expert witnesses were disbursements. They fit the description given by Lord Langdale and Dal Pont. The statutory formula (D) refers to the total amount of disbursements the client must pay, or reimburse, to the solicitor in relation to the claim.

[35] 'Disbursements' is a term which, at least since 1849, has had a particular and well understood legal meaning. It is to be expected that the draftsman of s 48IC intended the word when used in the section to have that meaning. As O'Connor J said in *Attorney-General (NSW) v Brewery Employees Union of New South Wales* (1908) 6 CLR 469 at 531:

> 'Where words have been used which have acquired a legal meaning it will be taken, prima facia, that the legislature has intended to use them with that meaning unless a contrary intention clearly appears from the context. To use the words of Denman J in *R v Slator* … - "but it always requires the strong compulsion of other words in an Act to induce the court to alter the ordinary meaning of a well known legal term." '.

[36] The respondent's construction of the term 'disbursement' as found in s 48IC alters the ordinary meaning of the word as it was explained in *Remnant*. It will be recalled that the Taxing Masters defined disbursements as such payment as a solicitor is bound to make, in the due discharge of his retainer, 'whether his client furnishes him with money for the purpose, or with money on account, or not …' and '… the question whether such payments are professional disbursements … is not affected by the state of the cash account between … solicitor and … client …'.

This covers the very point advanced by the respondent. If a client furnishes the solicitor with money for the purpose of allowing the solicitor to make disbursements the money must, until the disbursement is made, be held in the solicitor's trust account, as happened with Ms Wickham and Mr Curlewis. The Taxing Masters had no doubt that the mechanism by which a client paid his solicitor in respect of disbursements was immaterial. A payment is a disbursement because it is a payment the solicitor is bound to make, and which he pays on behalf of his client. The means by which the client recompenses the solicitor does not determine whether a payment is a disbursement.

[37] *Doyle* is helpful on the point. Mr Doyle was a solicitor for a mining company. He sought to include in his bill of costs a sum for the expenses of certain witnesses. The expenses had been paid directly by the company. Lutwyche J said:

> '… the money paid to witnesses never passed through Mr Doyle's hands … it was contended that the payment of the … expenses was a professional charge … . If an attorney receives money from his client on account, and with that money pays fees to counsel, or the expenses of witnesses for their attendance, or pays out of his own pocket, there is a disbursement for which he is entitled to charge … . Mr Doyle (would not) have been responsible if the expenses of the witnesses had not been paid … . In the matter of their payment he has been neither act nor part …'.

[38] This is a clear statement that if the solicitor pays counsel or witnesses from monies paid into his trust account for that purpose, the payment of those expenses from those monies is a disbursement.

[39] It would be an odd thing if the draftsman of s 48IC meant disbursements to have a different connotation and to have that character only in those circumstances where the client paid the solicitor directly and not 'on account'. There is no obvious reason why the draftsman would have adopted such a meaning, or why he would ignore the established meaning of the term.

[40] The respondent's construction leads to anomalous results depending upon the precise mechanism by which a solicitor might go about paying disbursements. If the solicitor received from counsel a memorandum of fees for $1,000 he might:

(a) Draw a cheque for the amount in favour of counsel on his trust account utilising monies paid there by the client;

(b) Draw a cheque for the amount on his trust account in favour of his general account and then draw a cheque for the same amount on his general account in favour of counsel.

(c) Draw a cheque on his general account in favour of counsel and then draw a cheque on the trust account in favour of his general account;

[41] The respondent's argument would exclude each of these payments from the statutory definition of disbursement. The argument can only hold good, if at all, to example (a). It is, I think, obvious that the modes of payment in examples (b) and

(c) fall within the statutory definition. In example (b) the client has paid the solicitor to enable the solicitor to pay the disbursement. In example (c) the solicitor has paid the disbursement and is out of pocket. The client pays the solicitor by way of reimbursement. In both cases the client has paid or reimbursed the practitioner the amount of the disbursement.

[42] It is only example (a) that may give rise to an argument that there has not been payment to or reimbursement of the solicitor. Even here the argument cannot be accepted. In example (a) the solicitor had incurred a debt or liability to a provider of services. He has done so in relation to the conduct of his client's speculative personal injuries claim. If the solicitor paid the amount there is no doubt it would be a disbursement which he could include in his bill of costs. What the solicitor does is to discharge his own liability to the service provider by paying with the client's money put in his trust account for that very purpose. The client's money has discharged the solicitor's debt. It is, in my opinion, plain that payment to the trust account for the discharge by the client's money of the solicitor's debt is a payment to the solicitor. Both *Remnant* and *Doyle* are express authorities for that proposition.

[43] I cannot believe that vagaries in the mode of payment can determine whether or not a item of expenditure was a disbursement. Such an approach to the construction of the section would allow solicitors to circumvent it. Merely by choosing mode (a) in preference to (b) or (c) the solicitor could prevent D having any value at all, and so inflate the figure [E – (R + D)] to his own financial benefit.

[44] The section should not be given such a construction. The evident purpose of Division 2A is to protect litigants who bring speculative personal injuries claims and who retain legal practitioners on that express basis. The formula by which the protection is achieved is not to be given a meaning which would allow for capricious results or which, by the adoption of one mode of payment over another, allow a practitioner to erode its effectiveness.

[45] In fairness to the respondent it should be said that he took the advice of senior counsel and acted in accordance with that advice. The Queensland Law Society also accepted the correctness of the advice. For the reasons I have endeavoured to express I think it was wrong.

[46] I therefore declare that with respect to Katherine Wickham and Mark Curlewis disbursements and outlays paid from the respondent's trust account in the prosecution of their actions were disbursements as defined by s 48IC of the *Queensland Law Society Act* 1948.

Interest

[47] The applicant also complains that the respondent did not include as a disbursement the amount of interest charged by Bevtech on the loans to Mr Curlewis and Ms Wickham. The former paid $10,140.90 and the latter $2,353.29.

[48] The applicant submits that because the respondent would not accept the retainer if he was liable for disbursements, the only way the clients could proceed with their claims was to borrow money, which in turn involved them in an obligation to pay interest. Therefore the payment of interest was a necessary incident of the prosecution of the client's claims by the respondent. It is pointed out that cl 3 of the

client agreement with Ms Wickham provided that if she could not herself fund 'the outlays and costs associated with (her) case' (and she could not) it would 'be necessary for (her) to enter into a litigation loan to fund all the costs …'. The litigation loan agreements obviously carried with the advance an obligation to pay interest. The advances were paid to the respondent's trust account to enable him to pay disbursements. The clients irrevocably authorised the solicitors to pay Bevtech the interest due on their loans from their settlement monies.

[49] From this 'chain of obligations', as it was called, the applicant submits that the payment of interest was an integral and essential concomitant of the prosecution of their claim for damages and the amount paid by way of interest is accordingly a disbursement for the purposes of s 48IC.

[50] I do not accept this submission. It may, of course, be accepted that without the loan and the attached obligation to pay interest the clients could not have retained the respondent and could not have proceeded with their claims. The money was necessarily spent to obtain the settlements but that is not enough to designate the interest payments as disbursements. Such payments are those which a solicitor is bound to make in the performance of his retainer, or which are sanctioned by the general established custom and practice of the profession. No evidence was adduced to show that it is general and established custom that a solicitor pay interest on behalf of a client to a financier, even one who lends money to the client to enable him to fund outlays incurred with his claim.

[51] The applicant submitted that litigation lending is a new phenomenon and the court's appreciation of what constitutes a disbursement should move with the times. Litigation lending as a distinct form of business may be new, but some litigants have always borrowed, from banks, family or friends, to fund an action they could not themselves afford. The situation is not new. I was not referred to any case in which the payment of interest on such a loan was held to be a disbursement.

[52] There is another reason for rejecting the submission. A disbursement is a payment made by the solicitor on behalf of his client. The solicitor is entitled to claim payment for the disbursement because he has incurred a liability on the client's behalf and is entitled to have the client discharge it by payment or reimbursement. This is not the case with interest due under the litigation loan agreements. The respondent came under no obligation to pay interest. He did not pay it on behalf of the clients. They paid it themselves from their settlement monies. (The respondent did guarantee the clients' performance of their promise to pay interest but that is a different matter.) The payment of interest to Bevtech was not a payment to the respondent. Bevtech had no claim against the respondent for the payment of interest. Paying interest did not discharge any obligation that the respondent owed. Had the clients defaulted Bevtech could have recovered the amount of the debt from the respondent pursuant to his guarantee but that would have been the enforcement of a separate and distinct obligation which arose only upon the client's default in paying interest.

[53] Disbursements are, in the context of these claims, payments made for the purpose of assembling materials to prove the client's claim. The amount in question here is an incidental (though necessary) expense of borrowing money in order to pay for the gathering of those materials. The payment of interest is a significant step removed

from the payment of suppliers of services necessary to put together a case for the client.

[54] I do not think the payment of interest is a disbursement and is not caught by the definition in s 48IC. I decline to make the declaration sought.

GST

[55] The third contention concerns the imposition of an additional sum on the fees the respondent charged both Ms Wickham and Mr Curlewis. That sum was 10 per cent of the fees which had been calculated by reference to the statutory formula. The imposition was said to be justified as being required by *A new tax system* (*Goods and Services Tax) Act* (‘*GST Act’*). The imposition of the additional sum further reduced the amount received by the clients.

[56] The applicant contends that the *GST Act* did not authorise or permit the respondent to charge his clients more than the amount allowed by the application of the formula.

[57] In language rather too familiar s 9-5 of the *GST Act* provides that:

> ‘You make a *taxable supply* if:
>
> (a) You make the supply for consideration; and
> (b) Supply is made in the course … of an enterprise that you carry on …’.

Section 9-10 provides that supply includes the supply of services.

[58] The respondent was, on or after 1 July 2000, the supplier of services and his supply of those services was taxable.

[59] Section 9-40 told the respondent:

> ‘You must pay the GST payable on any taxable supply that you make.’

Section 9-70 provides that the amount of GST on a taxable supply is 10 per cent of the value of the taxable supply.

[60] The terms of the client agreement made with Ms Wickham allowed the respondent to recover from her the amount of GST he had to pay as a consequence of providing legal services to her. I would assume that the respondent had a similar right against Mr Curlewis. The question is whether the *GST Act* together with the terms of the costs agreements allowed the respondent to recover from his clients an amount greater than that derived from the application of the formula.

[61] In my opinion the answer is negative. The *GST Act* imposes upon the respondent an obligation to pay to the Australian Tax Office 10 per cent of the value of the services he supplied to the clients. The *GST Act* imposed no obligation on either of the clients to pay the GST. What the respondent did was to increase the fees payable by the clients by the amount of the liability imposed on him by the *GST Act*. He sought reimbursement for his obligation to pay the tax by means of

increasing the professional fees he charged the clients. The client agreement allowed him to pass on the amount of the tax liability.

[62] However the respondent was not justified in claiming the additional amount. His obligation to pay the tax remained his. The amount he could charge the clients by way of fees was fixed by the formula, despite the client agreement. It does not allow for any augmentation because the respondent came under an obligation to pay GST. The formula fixes the maximum amount the respondent could charge the clients by way of his professional fees. Independently of that statutory limitation the *GST Act* imposed on the respondent an obligation to pay tax, the amount of which was fixed by the value of the services he supplied. The two statutes operate independently according to their provisions. The *GST Act* does not impinge upon or override s 48IC of the Act.

[63] I declare that the maximum amount of fees that the respondent was entitled to charge Katherine Wickham and Mark Curlewis in accordance with the formula specified in s 48IC of the *Queensland Law Society Act* 1948 included any tax payable by the respondent pursuant to the *GST Act*; and I further declare that the respondent was not entitled to charge Katherine Wickham or Mark Curlewis, or deduct from their settlement monies, any amount in respect of goods and services tax he may have been liable to pay on the supply of legal services to those clients.