

**Private and Confidential**

Dr Alfonsas Stonis

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File References: CAS014655, CAS014772 \_2

26 August 2024

Dear Dr Stonis

**Complaints by Alfonsas Stonis about Moya De Luca-Leonard and Michelle Campbell**

I write to you regarding your complaints:

1. Your complaint about Ms Moya De Luca-Leonard was received on 29 October 2023 and was assigned the file reference CAS014655.
2. Your complaint about Ms Michelle Campbell of Counsel was received on 29 October 2023 and was assigned the file reference CAS014772.

**Background to your complaints**

You state that you were involved in a traffic accident on 30 March 2015.

I note that a Certificate of Determination dated 3 July 2023 from the Personal Injury Commission (PIC) assessed your damages at \$410,929.40 as well as legal costs and disbursements in the sum of \$41,319.20.

I further note that you accepted the above award and provided a signed statement in that regard on 27 August 2023. It appears that these monies have been received into your most recent solicitor's trust account.

### **Your complaint about Ms De Luca-Leonard**

It appears that you engaged Ms De Luca-Leonard and Ms Campbell of Counsel after withdrawing instructions from your previous lawyer Ms Potts.

Broadly, you dispute the quality of service provided and allege that Ms De Luca-Leonard was negligent in your matter in that:

- She failed to dispute the report from the psychologist, Ms Vanitha Moodley
- She failed to dispute Mr Ceballos's Application for Panel Review of Medical Assessment.
- She provided you with incorrect information regarding claims in relation to the damage to your bicycle.

I understand that you also dispute Ms De Luca-Leonard's legal costs as represented by an invoice dated 7 November 2022 for the amount of \$63,981.50 on the basis that you allege that Ms De Luca-Leonard overcharged and exaggerated her fees.

### **Your complaint about Ms Campbell**

Your complaint about Ms Campbell is similar and contains the same attachments as your complaint about Ms De Luca.

I understand that you dispute Ms Campbell's legal costs as represented by an invoice dated 26 October 2022 for the amount of \$13,090 on the basis that you allege that Ms Campbell overcharged and exaggerated her fees.

### **My decision and reasons**

**I have determined to deal with these two complaints together noting the practitioners were engaged as your legal representatives on the matter.**

### **Your complaints about Ms De Luca-Leonard and Ms Campbell**

While you continue to dispute the quantum of the damages awarded and are of the view that Ms De Luca-Leonard and Ms Campbell did not represent you properly, I do not consider it appropriate to consider their alleged conduct on a retrospective basis in circumstances where:

1. Your claim has already been finalised and a Certificate of Determination has been issued. This Office does not have the power to review, consider, reverse or overturn the decision made by PIC.
2. PIC is the appropriate forum to consider the factual and legal issues in your claim and the complaints process with my Office is not a forum to reventilate issues that have already been determined during the PIC Assessment Conference.
3. Noting you have already accepted the abovementioned award and signed a Statement to that effect, there is nothing further my Office can do in regard to that aspect of your matter, I note it would have been open to you to submit any concerns you might have had to PIC.

While it is not my role to reconsider the determination in this matter, I observe that it appears Mr Macken addressed in detail various contentious issues such as your employment and medical histories (including consideration of the relevant doctors' reports from Dr Moodley, Dr Sutton, Dr Roberts etc) in the periods preceding and following the motor vehicle accident.

If you are of the view that your legal representatives were negligent in their representation of you, it would be open to you to seek advice about any civil remedies that may be available to you in an action for professional negligence. My Office cannot assist with such claims or provide legal advice.

In terms of the cost dispute aspect of your complaints about Ms De Luca-Leonard and Ms Campbell, I note that the subject invoices - Ms Campbell's invoice dated 26 October 2022 and Ms De Luca-Leonard's invoice dated 7 November 2022 are completely out of time for my Office to consider.

I note the email correspondence exchanged between Ms De Luca-Leonard and Mr Livers between August to October 2023.

It appears that in his email dated 31 August 2023, Mr Livers informed Ms De Luca-Leonard of your proposal to provide an undertaking that Mr Livers would retain the sum of \$77,071.50 in trust until Ms De Luca-Leonard's costs were agreed/ assessed on condition that she authorised the Insurer to release the funds.

It further appears that Ms De Luca-Leonard did not agree to this and there was further negotiation with Mr Livers attempting to resolve the matter with a Tripartite Agreement and you offering to pay \$14,000 to Ms De Luca-Leonard and \$2800 to Ms Campbell under cover of your email dated 24 October 2023.

I note that the Tripartite Deed is not signed by Ms De Luca-Leonard and it is unclear how Ms De Luca-Leonard and Ms Campbell's outstanding fees are to be resolved but it appears that the entirety of the monies are now in Mr Livers' trust account.

Nevertheless, in circumstances where the subject invoices are out of time and hence outside the jurisdiction of this Office and where previous attempts at fee negotiation between Mr Livers and Ms De Luca-Leonard have failed, I do not consider there is a role for my Office in the resolution of the cost issues. I have closed these complaints about Ms De Luca-Leonard and Ms Campbell on the basis that informal resolution cannot be reached and I do not have power to make any determinations about costs.

## **Conclusion**

It is my view that my Office can be of no further assistance to you and the complaints about the above lawyers are closed.

Please refer to Fact Sheet 1 previously provided to you should you require more information about the complaint handling process.

You may also access Fact Sheet 1 on our website at [www.olsc.nsw.gov.au](http://www.olsc.nsw.gov.au).

A copy of this closing letter has been forwarded to Ms De Luca-Leonard and Ms Campbell for their records.

Thank you for taking the time to alert me to your concerns.

Yours sincerely

A handwritten signature in cursive script that reads "Samantha Gulliver".

Samantha Gulliver

**NSW Legal Services Commissioner**