

## Update - *Bingham v Bevan* [2023] NSWCA 86

On 5 May 2023, the Court of Appeal allowed the appeal of the solicitor, Mr Bingham against the barrister, Mr Bevan. The appeal set aside the earlier judgment in *Bevan v Bingham* [2022] NSWSC 863 against the solicitor, where the Supreme Court accepted a Costs Assessor's finding that the conditional costs agreement between the parties was void on the grounds the barrister had not made proper cost disclosure under the *Legal Profession Uniform Law* (NSW) (the **Uniform Law**), and that this included the voiding of a clause which provided the solicitor was not liable to the barrister unless he was put in funds by the client.

The Law Society's [Ethics and Standards Quarterly](#) (November 2022 issue) discusses the earlier judgment in further detail.

On appeal, the Court took a purposive approach to the interpretation of section 185(2) of the Uniform Law, which states that a law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover, if the costs agreement had not been void.

The Court of Appeal decided that the benefit provided by section 185(2) extended to an agreement entered into in breach of section 178(1) of the Uniform Law. This had the effect of allowing the solicitor to defend a claim for a judgment on costs incurred by the barrister, even though clause 4 of the costs agreement was technically void. Clause 4 of the costs agreement stated that the solicitor was not required to pay the barrister's fees, if the solicitor had not obtained money from the client.

The Court of Appeal also held that since there was no liability to pay costs by the solicitor, the judgment based on the certificate of determination which assumed there was a legal liability to pay, had been entered irregularly and should be set aside.

The Court of Appeal ordered that the barrister to pay the solicitor, the amount of \$136,525.95 by way of reimbursement of money paid to the barrister pursuant to a garnishee order.

The barrister was also ordered to pay the appeal costs and the costs of the solicitor for the original notice of motion.

The purposive statutory interpretation approach by the Court of Appeal would be greatly appreciated and welcomed by legal practitioners in NSW.