



on behalf of the **Legal Services Commissioner**

1 May 2014

Mr Richard Smedley  
ANTHONY HARPER  
PO BOX 2646

**For enquiries:** Robin Lees  
**Tel:** 07 343 1464  
**Email:** Robin.Lees@justice.govt.nz

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<b>Legal aid number</b>	<b>13443117</b>
<b>Client name</b>	<b>Mr David McCarthy</b> 616 Oneriri Road RD 2 Kaiwaka 0573  <b>Phone:</b> (h) (09) 9022082
<b>Matters</b>	Civil - Defendant

Dear Mr Richard Smedley,

### **About your client's legal aid**

#### **Intention to withdraw aid**

Your client's grant of legal aid is to be withdrawn.

We consider that your client:

- has required the proceedings to be conducted unreasonably so as to incur an unjustifiable Legal Aid expense, or
- has required unreasonably that the proceedings be continued.
- no longer has reasonable grounds for defending the proceedings or should continue to receive legal aid.

Please refer to s 30(2)(c) & (d) of the Legal Services Act 2011.

Given the settlement offer, it is unreasonable for the proceedings to continue, or for your client to continue to receive legal aid for the following reasons:

- a. The applicant is the defendant. He does not seek to counterclaim against



JZK, or to claim monetary compensation from it. It follows, settlement will not undermine the applicant's financial position.

a. The settlement offer of JZK is reasonable. It does not require the applicant to pay any monies, damages or costs.

b. The applicant rejects the settlement offer because he does not wish to be gagged or to have his freedom of speech restricted. But, pursuant to section 14 of the New Zealand Bill of Rights Act, the applicant is free to express his opinion about JZK and to impart and receive information about it. He is not free, however, to impart or receive JZK's intellectual property, without its permission.

c. This matter is more concerned, not with the applicant's freedom of speech rights, but with intellectual property rights. It is undesirable for aid to continue to fund such an issue, given the settlement offer and given the applicant has other means of expressing his concerns about JZK, which do not involve costly proceedings.

d. The applicant wishes to defend this matter on principle, at the taxpayer's expense, in the knowledge proceedings to date have exceeded \$40,000, and will involve tens of thousands of more dollars. This stance is unreasonable as it will incur an unjustifiable expense.

e. By not accepting the settlement offer, legal costs will increase as will the likelihood of costs being awarded against the applicant, the Commissioner, or both.

f. Having regard to costs, benefits and the risks of going to trial, a reasonable self-funding person would accept the settlement offer. It is unreasonable for the applicant to require the proceedings to continue.

This letter is the Notice of Intention to Withdraw, as required by s 31(2) of the Legal Services Act 2011. If you or your client disagrees with this decision you have 24 days from the date of this letter to send us written submissions on why aid should not be withdrawn. If submissions are not received within 24 days then legal aid will be withdrawn.

We have told your client that the withdrawal will not affect:

- their obligations from the conditions of the grant; or
- our rights to enforce those obligations; or
- our obligations to pay for services provided under the grant before the aid is withdrawn.

We told your client that if they wish to discuss this further, they may talk to you or to Robin Lees on 07 343 1464 or by email [Robin.Lees@justice.govt.nz](mailto:Robin.Lees@justice.govt.nz).

Yours sincerely,

*Robin Lees*



Robin Lees  
Grants Officer

**Reconsideration rights**

If your client is aggrieved by the decision made they may apply for a reconsideration of the decision using the reconsideration form on our website [www.justice.govt.nz](http://www.justice.govt.nz) or by calling Robin Lees on 07 343 1464 who will send a form to you, to complete with your client.

If your invoice has been declined for being submitted outside of the statutory time frame, you may apply for a reconsideration of that decision.

An application for reconsideration must be lodged within twenty (20) working days from the date of notice of this decision. If a reconsideration is not sought, this decision is final. This decision stands pending the outcome of any reconsideration.

