

Short Minutes Transcript: Independent Legal Advice

In the 2013 case of *Renard & Geach* the Federal Circuit Court declared that a financial agreement signed in 2008 was not binding on the parties. The husband had sought the declaration on the basis that he did not receive the required independent legal advice from his solicitor before he signed the agreement.

Both the evidence of the solicitor as to the advice he provided and the comments of the Judge provide guidance for solicitors when in this situation.

First the evidence of the solicitor:

- I spent probably a little less than an hour with my client
- I made no file notes other than to tick each clause of the agreement
- My entire file consists of the draft agreement with the ticks
- Signing the statement of advice is evidence that I gave the requisite advice
- When asked whether a prudent solicitor would write notes in the file he replied "Not when you're charging \$440"

On the solicitor's evidence the Judge stated, and I quote:

- "It is difficult to see how the role (of a solicitor) could be fulfilled in even a 50 minute interview"
- Solicitors should "always make clear and contemporaneous notes of any advice given to a client and for exactly the reason that this has led to this litigation"
- The solicitor's view "that he did not need notes of the conversation and advice when he placed ticks next to each clause of the draft agreement, does not in my view pass muster as prudent practice in this situation. Indeed, it could be said that his view indicates a rather cavalier and even lazy approach to his responsibilities"

Whenever any independent advice is given solicitors should ensure that the advice is fulsome, correct and complete and that appropriate evidence of the advice is retained.

Additionally, in view of the recent High Court decision of *Thorne and Kennedy* solicitors instructed to prepare or advise on pre-nuptial agreements or any other document that requires independent legal advice, need to exercise abundant caution.

Links to both cases can be found below:

- [Renard & Geach \[2013\] FCCA 617](#)
- [Thorne v Kennedy \[2017\] HCA 49](#)