

LCRO 8/2015

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

A determination of the [City] Standards Committee

**BETWEEN**

**Mr and Mrs AB**  
Applicants

**AND**

**Mr FT**  
Respondent

**DECISION**

**Introduction**

[1] In an application filed on 13 January 2015 Mr and Mrs AB have sought a review of a determination of the [City] Standards Committee to take no further action on their complaint against [City] barrister, Mr FT. The complaint concerned Mr FT's conduct as Mr and Mrs AB's counsel in litigation in which they were involved.

**Background**

[2] Mr and Mrs AB have been involved in extensive litigation concerning the lease of a motel in [Town]. Mr and Mrs AB's company, EFG Limited (EFG), was the tenant under that lease. The dispute with the landlord began in the late 1990s.

[3] The motel litigation was described by Mr FT in an email to his then clients Mr and Mrs AB, as "involving many issues and spanning well over a decade". Mr FT referred to a notice of statutory demand, High Court proceedings to set that aside, an

appeal to the Court of Appeal, a further demand, eviction from the motel, and an arbitration for lease breaches – as well as a potential counterclaim from the landlord.<sup>1</sup>

[4] Mr FT observed that:<sup>2</sup>

any one of these would be a large piece of litigation but, taken together, they represent a significant set of problems from which you must extricate yourselves ... [I and others] have worked extremely hard on your behalf to advance your position on all these fronts to the very best of our professional abilities.

[5] Nevertheless Mr and Mrs AB maintain that Mr FT, in collusion with others and acting alone, conspired to or actually acted to render them destitute.<sup>3</sup> The method to bring this about included misleading Courts, misleading the ABs, failing to provide proper advice and failing to follow instructions.

### **The complaint**

[6] Mr and Mrs AB lodged their complaint with the New Zealand Law Society Complaints Service on 12 February 2014.

[7] The complaint runs to 116 pages and is supported by two Eastlight folders of supplementary documents relating to the motel litigation.

[8] The complaint traverses the history of Mr FT's involvement as counsel for Mr and Mrs AB, and seeks to identify several areas where his conduct was dishonest or otherwise criminal.

[9] The first hint of trouble for Mr and Mrs AB was Mr FT's failure to meet the demand process by repudiating the lease and demand arbitration, so as to prevent imminent eviction. The failure to take these steps, according to the ABs, demonstrates that Mr FT "was already in collusion".<sup>4</sup>

[10] Mr and Mrs AB are very clear that the landlord was significantly in breach of its obligations under the lease, and that for this reason the demand procedure initiated by the landlord was completely inappropriate. The ABs are equally clear that this should have been obvious to Mr FT, and that the steps he took in relation to the demand were

---

<sup>1</sup> Email FT to the ABs (11 September 2012).

<sup>2</sup> Above n 1.

<sup>3</sup> Letter AB to Complaints Service (undated, but accompanied by letter dated 11 February 2014).

<sup>4</sup> Letter AB to Complaints Service (11 February 2014) at 2.

wrong and only taken by him because he was acting dishonestly against their interests, including being “in collusion with [the opposing lawyers]”.<sup>5</sup>

[11] Mr and Mrs AB allege that Mr FT “refused to advocate the vital, significant and substantive issues which would have won the case”.<sup>6</sup>

[12] A summary of Mr and Mrs AB’s allegations against Mr FT is as follows:<sup>7</sup>

A conspiracy to –

- Defraud Mr and Mrs AB of EFG’s assets, chattels, business, lease and goodwill.
- Defraud Mr and Mrs AB of the substantial claim they had against the landlord.
- Defraud Mr and Mrs AB by deliberate excessive fee charging.
- Collude with the landlord’s lawyers to sabotage the case before the High Court and Court of Appeal before it could get to arbitration; Mr FT was already in the process of sabotaging the forthcoming arbitration.
- That collusion led to an award of costs in favour of the landlord which was a fraud on EFG.
- Defrauding Mr and Mrs AB of their personal assets.

[13] The substantial complaint document addresses each of these allegations by reference to the pleadings filed in the motel litigation, and by reference to correspondence between both Mr FT and the ABs, and between opposing counsel. The complaint document leaves no stone unturned.

[14] I do not propose to set out in any detail, or otherwise endeavour to summarise, that complaint document. I have read each page of it, and am familiar with both the particular allegations (set out above at [12]) and the evidence which it is claimed supports those allegations.

[15] Appendix 4 to Mr and Mrs AB’s complaint helpfully sets out a chronology of what they describe as “Mr FT’s collusion and criminality”.

---

<sup>5</sup> At 3.

<sup>6</sup> At 3.

<sup>7</sup> At 4.

[16] The ABs conclude their letter of complaint by:<sup>8</sup>

seeking damages from Mr FT for breaches of fiduciary, tortious and contract duties for his negligent failure to give correct advice, and breach of trust which led to us not getting the outcome we should have.

*Mr FT's response*

[17] Mr FT's response to the AB's complaint is contained in his 12-page letter to the Complaints Service dated 7 July 2014.

[18] At the outset Mr FT rejects the allegations that the ABs have made against him. He said that "... at all times [he] acted for Mr and Mrs AB and their company ... to the very best of [his] abilities sometimes under difficult circumstances".<sup>9</sup> He describes the motel litigation as having been fought by the opposing lawyers "in the best traditions of the profession".<sup>10</sup>

[19] Mr FT rejected suggestion that he acted in any way other than in the very best interests of Mr and Mrs AB. To the extent that the ABs have included Mr CH, (Mr FT's instructing solicitor) in the allegations they have made against Mr FT, he describes Mr CH as a lawyer of the "highest integrity. That he would be party to any conspiracy, collusion, corruption or criminality is inconceivable".

[20] Mr FT describes being approached in August/September 2011 to act for Mr and Mrs AB by a building surveyor who had been assisting the ABs. The case was outlined to Mr FT as a "leaky building" case, and he was approached because of his experience in that area. Mr FT arranged for Mr CH to act as his instructing solicitor.

[21] The steps that he took in conjunction with Mr CH, and several expert witnesses, to marshal the motel litigation and deal with the claims being made by the landlord were set out by Mr FT in his response to the complaint. Part of those steps involved applying to set aside a notice of statutory demand that the landlords had served on Mr and Mrs AB, and then appealing the outcome of that to the Court of Appeal. Mr FT said that matters were "explained at length" to the ABs.<sup>11</sup> He noted that:<sup>12</sup>

---

<sup>8</sup> At 109.

<sup>9</sup> At [4].

<sup>10</sup> At [5].

<sup>11</sup> At [18].

<sup>12</sup> At [23].

throughout all this, Mr and Mrs AB were fully informed of all decisions and no steps were taken without their instructions. There is extensive email correspondence between Mr and Mrs AB and Mr CH and me.

[22] At about the time that the Court of Appeal dismissed Mr and Mrs AB's appeal against the decision of the High Court not to set aside the demand, Mr FT noted that the ABs began to lose confidence in him and in Mr CH. It appears that matters deteriorated to the point when in September/October 2012 Mr CH terminated his retainer on the basis that the necessary relationship of trust and confidence between the parties, had broken down.<sup>13</sup> Mr FT withdrew at that point, as he was without an instructing solicitor.<sup>14</sup>

[23] Mr FT referred to "the huge amount of time and effort that went into representing Mr and Mrs AB ... throughout these longstanding, at times complicated, and urgent sets of proceedings".

#### *Specific complaints and Mr FT's responses*

##### *Repudiation of lease*

[24] There was no basis upon which the lease could be repudiated. Mr FT hid nothing from the Court. He did not conspire with the landlord's lawyers to act corruptly or in a criminal manner.

##### *Criminal activities*

[25] Mr FT emphatically rejects any suggestion that he engaged in criminal activities at any time, whether alone or in concert with others. He "fought hard to achieve what he could for Mr and Mrs AB".<sup>15</sup>

##### *Failure to follow legal remedies*

[26] Mr FT describes the steps he took in both the High Court and the Court of Appeal in relation to the demand. He rejects allegation that he failed to put appropriate authorities to the Court. He describes the Associate High Court Judge as having tested the arguments of both sides and coming to the conclusion that the demand should stand.

---

<sup>13</sup> At [25].

<sup>14</sup> Appendix 105 to the complaint.

<sup>15</sup> At [33].

*Incorrect advice concerning eviction*

[27] Mr FT is clear that Mr and Mrs AB could not resist eviction by the landlord. Associated issues, such as chattel valuation, were left to be dealt with at arbitration.

[28] He rejects the suggestion that he attempted to “sabotage” Mr and Mrs AB’s case, or that anything was hidden from them. He had become involved in the matter after there had been nearly 11 years of “acrimonious dispute with their landlord and being in arrears of rent”.<sup>16</sup>

[29] Mr FT again denies that anything was hidden from his clients, noting that they were “fully informed of everything throughout, as the vast array of email correspondence demonstrates”.<sup>17</sup>

[30] Appropriate tactical steps were taken by Mr FT and proper, up to date, and relevant authorities were relied on in submissions to the Court. Both Mr FT and Mr CH considered that referring, effectively, all matters to arbitration was appropriate.

[31] Mr FT emphatically rejects suggestion that he unlawfully or otherwise improperly conspired with any other party or parties, at any time.

*Ensuring that the arbitration did not commence*

[32] This too is denied by Mr FT who made the point that the arbitrator appointed to hear the matters, [RB] QC, “ensured that the arbitration process was followed appropriately”.<sup>18</sup>

[33] Mr FT noted that the landlord’s lawyers were vigorously advancing their client’s position to have the motel empty – this after some 11 years of “bickering” with the ABs. To suggest that arbitration could have been agreed by the landlord without it having taken the aggressive steps that it chose to, was “fanciful”.<sup>19</sup>

*Defrauding the motel of chattels*

[34] Mr FT submits that the correspondence relied upon by Mr and Mrs AB simply shows opposing lawyers appropriately representing their client’s positions. He rejects allegation that the ABs were defrauded.

---

<sup>16</sup> At [47].

<sup>17</sup> At [48].

<sup>18</sup> At [59].

<sup>19</sup> At [65].

*Evidence hidden from the High Court, Court of Appeal and the Arbitrator*

[35] This allegation is rejected by Mr FT. He maintains that all properly admissible evidence was put before the Courts and the Arbitrator. Matters where there was no evidential basis were not put. The example relied upon by Mr and Mrs AB was their belief that the landlord had on-sold assets and received \$500,000. Mr FT submits that “there was simply no evidence of the assets being on-sold.”<sup>20</sup> This, he said, “was simply an assertion made by Mr AB on numerous occasions without any corroborative evidence whatever”.<sup>21</sup>

[36] Mr FT makes the point that neither the High Court nor the Court of Appeal was persuaded that the demand ought to be set aside. The rationale for this was that the set-off claimed by the ABs was not sufficient to justify them withholding rent from the landlord.<sup>22</sup>

*Conspiracy, collusion and deception of documentation*

[37] In response to these allegations, Mr FT notes that despite Mr and Mrs AB’s narrative of these allegations, no reason is provided as to why he (and others) would conspire, collude and deceive the Courts and an arbitrator.

[38] Mr FT submits that although he received “many dozens of emails from Mr and Mrs AB, some of which were several screens long”, much of the material was irrelevant and/or inadmissible. He says that “as officers of the court, [he was] required not to put this type of material before the court irrespective of the clients’ personal views”.<sup>23</sup>

*Other allegations of dishonesty*

[39] Mr FT sets out a number of other instances in which Mr and Mrs AB have alleged that he conspired with several others – opposing lawyers, Mr CH and experts retained by the ABs – to deceive and mislead the ABs. He variously refers to these allegations as “fanciful”, “baseless” or as otherwise lacking evidence in support.<sup>24</sup>

---

<sup>20</sup> At [36].

<sup>21</sup> At [29].

<sup>22</sup> At [71].

<sup>23</sup> At [74].

<sup>24</sup> At [85], [86], [89], [101] and [103].

### *Overcharging*

[40] Mr FT acted for the ABs for approximately 12 months. He has described in detail the nature and extent of that retainer. For that work, Mr FT charged fees totalling \$85,204.63 (including GST). Complaint is made about the level of those fees.

[41] In response Mr FT rejects that his fees were “exorbitant”. He points out that some work was not charged for, and that this was “frequently appreciated” by the ABs. Mr FT submits that his agreed charge out rate of \$300 per hour was less than he would normally charge, and certainly less than someone with his experience and seniority would charge.

[42] Mr FT notes rule 9.1 of the the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules), which sets out the factors to be taken into account when determining a reasonable fee. He submits that the fees charged by him were entirely in accordance with the rule 9.1 criteria. He submits that:<sup>25</sup>

Looking at the matter as a whole and the global picture of the High Court and Court of Appeal proceedings, together with the arbitration, the urgency of the situation, the amount at stake ... and the amount of work undertaken, [my fees were] fair and reasonable in all the circumstances.

[43] Mr FT notes that he has not sought to recover an outstanding balance in connection with his final invoice as he wished to “put this whole unhappy matter behind” him. He rejects allegation that he has adopted this course because of an acknowledgement that he has overcharged.

[44] In conclusion Mr FT submits that he represented the ABs to the best of his ability. He was open and candid with them and advanced only arguments that were relevant and appropriate. By the time he had become involved the matter was over 11 years old, and eventually Mr and Mrs AB “became just too difficult to deal with”.<sup>26</sup>

### *Response by Mr and Mrs AB’s*

[45] Mr and Mrs AB’s response to Mr FT’s submissions included (in their own words) the following:<sup>27</sup>

- We refute completely Mr FT’s corrupt letter which he uses as a means to denigrate and disparage us in an attempt to cover his conspiracy and

---

<sup>25</sup> At [108].

<sup>26</sup> At [122].

<sup>27</sup> Letter ABs to Complaints Service (31 July 2014).



collusion with [the opposing lawyers] and his corruption and criminal activity.

- It is a wholly dishonest letter and it is disgraceful that Mr FT ... is still not owning up to his dishonesty and deception to both the High Court and the Court of Appeal.
- He is now dishonestly attempting to mislead a Standards Committee.

[46] Mr FT's position remains that he rejects the allegations of corruption, conspiracy, collusion, criminal activity and dishonesty that have been made against him by the ABs.<sup>28</sup>

### **The Standards Committee's decision**

[47] The Committee delivered its decision on 26 November 2014.

[48] The Committee determined pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) to take no further action on the complaint. The Committee noted that pursuant to s 138(1)(f) of the Act there were other remedies available to Mr and Mrs AB.

[49] The Committee set out the background to the complaint, noting that Mr FT had been retained to act for Mr and Mrs AB in connection with litigation concerning the lease of a motel.

[50] Mr and Mrs AB, as lessess under the lease, had become engaged in extensive litigation with the lessors and Mr FT was instructed by Mr and Mrs AB's solicitor to provide advice and representation concerning aspects of the litigation.

[51] The Committee noted that Mr FT had "communicated extensively with [the ABs], and this is reflected in the volumes of email correspondence which ..." was part of the complaint material.<sup>29</sup>

[52] The retainer between Mr and Mrs AB and Mr FT's instructing solicitor was terminated by that solicitor, when he determined that "the necessary relationship of trust and confidence no longer existed", and consequent upon that Mr FT withdrew as the ABs' counsel.<sup>30</sup>

---

<sup>28</sup> Email FT to Complaints Service (6 August 2014).

<sup>29</sup> Standards Committee decision at [8].

<sup>30</sup> At [9].

[53] The Committee identified the following issues for determination:<sup>31</sup>

- Was Mr FT guilty of collusion, fraud, sabotage and other criminal activity which led to losses being suffered by the complainants?
- Did Mr FT fail to follow instructions or act as a competent practitioner should have, and were his fees excessive?

[54] The Committee commenced its consideration of those issues by setting out the definition of unsatisfactory conduct in the Act.

[55] It noted Mr FT's response to the complaint, which included a denial of any conspiracy, collusion, corruption or criminality. Mr FT described his advice and representation throughout as appropriate, and this was reflected in the email correspondence.

[56] The Committee considered whether the litigation in the High Court and in the Court of Appeal had been undertaken by Mr and Mrs AB after receiving proper advice from Mr FT and their instructions to do so.

[57] The Committee considered the complaint and Mr FT's response to it and concluded "after a close consideration of the voluminous material provided by [the ABs] and [Mr FT's] response" that the legal services provided were of "an appropriate standard".<sup>32</sup>

[58] The Committee noted that the various heads of complaint by Mr and Mrs AB included "breach of fiduciary duty, tortious and contract duties, and negligent advice/breach of trust".<sup>33</sup>

[59] The Committee considered that there was no "limitation bar which would prevent [the ABs] from pursuing proceedings if they believe there is sufficient evidence available" and concluded that this was an alternative remedy available to the ABs that it was reasonable for them to exercise.<sup>34</sup>

[60] The Committee concluded that Mr FT "had done a very reasonable job in the circumstances [and] had no choice but to cease acting ... following the withdrawal of

---

<sup>31</sup> At [11] – [12].

<sup>32</sup> At [14]. At [17] the Committee noted that there were "116 pages (of complaint) plus a further 800 plus pages of supporting documentation".

<sup>33</sup> At [14].

<sup>34</sup> At [15].

his instructing solicitor”.<sup>35</sup> It held that there was no evidence to support the allegations of conspiracy, collusion, corruption and criminality.

[61] In relation to the complaint about fees, the Committee held that Mr FT’s total fees of \$85,204.63 (GST inclusive) were “high [but did] not appear disproportionate to the amount of work undertaken”.<sup>36</sup> It did not see any need for a review of the fees charged.

### **Application for review**

[62] Mr and Mrs AB’s application to review refers to “a serious miscarriage of justice [having] occurred as a result of Mr FT’s corrupt actions”. They ask for justice.

[63] In their application for review Mr and Mrs AB make extensive reference to what they describe as the New Zealand Law Society’s “deep [involvement] in the wilful concealment and cover-up of possibly the largest corruption by lawyers in the recent history of New Zealand”. They claim that “the corruption by lawyers and the NZLS is rife, widespread and far reaching”.<sup>37</sup>

[64] Mr and Mrs AB refer to the “complete corruption” of a Standards Committee that had heard one of its complaints against others involved in the lease litigation. They refer to a “scheme” on the part of the NZLS to have their various complaints considered by different Standards Committees “so that the corrupt, unlawful and dishonest decisions of each Committee are made in perceived isolation”.<sup>38</sup>

[65] Mr and Mrs AB describe attempts by one Standards Committee to provide a timetable about the lodging of further complaints as:<sup>39</sup>

a sinister reason of allowing them the opportunity to collaborate with the lawyers involved over the best way to decline every complaint so as not to have to take action and expose the corruption of the lawyers complained about and the NZLS.

[66] To complete their narrative of these allegations Mr and Mrs AB refer to the decision of the Committee which dealt with the complaint against Mr FT, as “corrupt”.<sup>40</sup>

### *Mr FT’s response to the application for review*

---

<sup>35</sup> At [17]

<sup>36</sup> At [16]

<sup>37</sup> Part 7: Supporting reasons for application at 2.

<sup>38</sup> Part 7: Supporting reasons for application at 2.

<sup>39</sup> At 2 - 3.

<sup>40</sup> At 3.

[67] Mr FT has made written submissions in opposition to the application for review. He notes the following:<sup>41</sup>

Unfortunately Mr and Mrs AB view any setback in legal matters with the unshakeable conviction that they have been the victims of a conspiracy. The result is an ever-widening pool of alleged conspirators ...

[68] Mr FT continues to deny any of the wrongdoing that has been alleged by Mr and Mrs AB. He maintains the position that he represented them responsibly, professionally, thoroughly and competently. He notes that by the time he was instructed, matters between the ABs and their landlord were some 11 years old and positions were deeply entrenched and complicated.

[69] Mr and Mrs AB have characterised Mr FT's response to their review as "corrupt". They maintain that it should have been obvious to the Committee that their allegations were well-founded, and say that:<sup>42</sup>

For the lawyer members of [the Committee] to wilfully ignore and conceal the substance of our complaint reeks of corruption and serious misconduct. They have become parties to the perversion of justice against us.

[70] They refer to the decision of the Committee as "wholly corrupt".<sup>43</sup>

### **Review Hearing**

[71] Mr and Mrs AB attended an Applicant-only hearing on 23 and 24 June 2016.

#### *The AB's submissions*

[72] Prior to the hearing Mr and Mrs AB provided at my request, a synopsis of their position, in a document called "General Comments About (the) Application for Review".

[73] The synopsis maintains Mr and Mrs AB's core allegations of corruption, criminality, collusion and conspiratorial conduct by Mr FT. I have read that synopsis carefully.

### **Submissions at Hearing.**

[74] At hearing, Mr and Mrs AB submitted that Mr FT:

---

<sup>41</sup> At [7].

<sup>42</sup> Letter AB to the LCRO (16 February 2016).

<sup>43</sup> At 13.

- (a) Had been acting in collusion with the [LN] lawyers.
- (b) Had concealed evidence from the Court.
- (c) Had sabotaged the Court proceedings.
- (d) Had failed to plead a remedy available under the Contractual Remedies Act.

### **The role of the LCRO on review**

[75] The role of the LCRO on review is to reach his own view of the evidence before him. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting his own judgement for that of the Standards Committee, without good reason.<sup>44</sup>

### **Analysis**

#### *Allegations of corruption*

[76] There can be no more serious an allegation against a lawyer, than one alleging that they have behaved dishonestly – whether that is framed as corruption or other similar repugnant conduct.

[77] A lawyer is required to act honestly and ethically in their dealings. These models of conduct are enshrined in both the Act, and Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules). Both open by stating these requirements in unequivocal terms.<sup>45</sup> Each statutory provision and rule that follows thereafter is predicated upon these fundamental obligations.

[78] The price for a lawyer who acts dishonestly is a high price. Dishonesty at the level alleged by Mr and Mrs AB, if established, would inevitably result in a lawyer being subject to severe disciplinary sanction.

[79] Mr and Mrs AB have not minced their words in their descriptions of Mr FT's conduct whilst he was acting for them. Their complaint to the Complaints Service opens by describing it as "serious". By the second paragraph of their complaint they refer to Mr FT's "conspiracy, collusion and ... unlawful actions". An accompanying

---

<sup>44</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [41].

<sup>45</sup> Lawyers and Conveyancers Act 2006, s 4; Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

document refers to his “corruption and criminality”, and alleges that his “crime is a heinous one”.<sup>46</sup>

[80] For Mr and Mrs AB, there is no room for error or misunderstanding; Mr FT is guilty of the most serious conduct it is possible to imagine that a lawyer might engage in.

[81] As I have already observed, these allegations have been set out in an initial 116 page complaint, supplemented by two full Eastlight folders of documents. I have read all of that material. It is a comprehensive summary of every step of the motel litigation in which Mr FT was involved.

[82] It is abundantly clear that Mr and Mrs AB carry with them a profound sense of injustice, which had its beginnings in a dispute with their landlord over the condition of the motel complex that they were leasing. Significant litigation has ensued, and this litigation has spawned its own set of associated proceedings, including several complaints against lawyers who have acted for the ABs, lawyers who have acted against them, lawyers sitting on Standards Committees hearing complaints against other lawyers and the Complaints Service itself.

[83] The LCRO is not a forum for relitigating the motel litigation. On any view of that litigation it was complex, wide-ranging and long-running. It involved both the High Court and the Court of Appeal.

[84] This Office has the statutory function of examining the conduct of lawyers against whom complaint has been made, and in doing so through the lens of the rules of conduct that govern a lawyer’s behaviour. This is not an Office that peer reviews strategic and tactical decisions made by lawyers during the course of litigation, unless those decisions engage rules of ethical and professional conduct.

[85] It is significant Mr and Mrs AB concluded their complaint document by recording that they seek damages for five separate causes of action; those being breaches of fiduciary, tortious and contractual duties, negligence and breach of trust.

[86] Each of these causes of action is well-known to and well-understood by a conventional adversarial Court. It is in that forum where allegations of this nature are best and properly heard. The rules of procedure and evidence mean that particulars of a claim must be identified and specifically responded to, and the parties are able to test

---

<sup>46</sup> Letter ABs to Complaints Service (11 February 2014).

the claim and defence with evidence that is scrutinised by both the other side and the Court.

[87] This Office cannot undertake that task. It is not any part of its statutory function to do so. As indicated, the mandate of this Office is to examine professional and ethical conduct by reference to the Act and the rules. Only when a lawyer has been found to have infringed either, can a disciplinary finding be made.

[88] In essence, Mr and Mrs AB make request of this Office to review the twists and turns of the complex decision-making that underpinned the conduct of the litigation, address the issues, the evidence, the decisions made at different junctures in the litigation, the merits of the arguments advanced, and then to make a definitive finding as to the merits of the case, those findings being what they clearly perceive to be inevitable conclusion that their case was correct. On accepting, as Mr and Mrs AB would have me do, that their long standing and deeply litigious argument with the lessor had resulted in an unjust outcome for them, that must then translate say Mr and Mrs AB to emphatic conclusion that Mr FT had represented them poorly.

[89] Underpinning Mr and Mrs AB's complaint is expectation that they are able to relitigate the lengthy dispute through the complaints process. A significant component of their submissions focuses on the arguments and evidence that they say should establish that they failed to receive justice from the Court process.

[90] I have carefully considered all of the arguments advanced by Mr and Mrs AB in support of complaint that Mr FT guided the litigation down the wrong path. I can identify no specific matters which present as supporting argument that Mr FT failed to provide adequate representation, and I note that there is no evidence of any of the judges who presided over the litigation, at various stages, making adverse comment about the manner in which Mr FT was conducting the litigation.

[91] It is possible that another lawyer may have adopted different strategies from those of Mr FT in connection with the motel litigation. Litigation is not an exact science and differences of approach are to be expected. A disciplinary outcome will only arise when a particular approach has infringed a lawyer's professional or ethical duties. I can find no evidence of any such breaches by Mr FT and I agree with the Committee's description of his conduct in acting for the ABs as "of an appropriate standard".

[92] I am then left with the task of examining the second thread to Mr and Mrs AB complaint, being allegation that Mr FT was corrupt, and colluded with other parties to ensure an adverse outcome for the ABs.

[93] Mr and Mrs AB contend that Mr FT has breached a number of the Client Conduct Rules. They cite a number of specific rules and I have considered each one, but their focus is on the Rules that reinforce the obligations of a Lawyer to act ethically and provide honest submission to the Court. They underpin allegation that a number of Rules have been breached by recourse to their overarching argument that Mr FT was corrupt, and working hand in glove with opposing counsel.

[94] Mr and Mrs AB have, with force and conviction, alleged that Mr FT's sole purpose when acting for them was to render them penniless by any means. Each of his strategic, tactical and legal decisions and any steps he has taken, have been viewed by the ABs as a thread in the overall fabric of his deceit. Mr FT's robust and emphatic denials of any wrongdoing are met with allegation that this is a further and serious falsity.

[95] Allegations this serious require a complainant to furnish clear and compelling evidence that there is a case to be answered. A strong belief that there has been dishonesty (by whatever language it is called – corruption, criminality etc) does not translate to “evidence”. An overwhelming sense of injustice is also insufficient.

[96] Mr and Mrs AB's analysis of Mr FT's actions is said by them to be the evidence of his wrongdoing. But this is not an objective and dispassionate analysis. The analysis is carried out by a party with a belief that theirs are the only possible conclusions. Moreover, no plausible explanation has been offered as to why Mr FT would act in this way.

[97] In their synopsis Mr and Mrs AB have said that:

Mr FT has not been able to produce any documentary evidence showing that he had protected our ... best interests by advocating [certain] matters to the Courts and the Arbitrator.

[98] This submission fundamentally misunderstands the nature of any complaints process. It is for a complainant to provide evidence of wrongdoing; it is not for a respondent to a complaint to prove their innocence. Mr and Mrs AB cannot simply say “we strongly believe that Mr FT has behaved improperly” and then expect him to demonstrate that he has not done so.

[99] Mr FT has responded comprehensively to the allegations that have been made. He can do little more than deny wrongdoing or incompetence, but he has done so forcefully.



[100] The approach adopted by Mr and Mrs AB when advancing argument of corruption, can only be described as extreme and expansive.

[101] The consequence of levelling allegation in such forceful terms is that the range of individuals embraced by the allegations has significantly escalated. As noted, Mr and Mrs AB are now describing the levels of corruption in the New Zealand law system exposed by their complaint, as “possibly the largest corruption by lawyers in the recent history of New Zealand”.

[102] In this specific complaint, the web of corruption that emanates from Mr FT’s engagement is wide. Mr FT’s instructing solicitor is accused of being engaged in the collusion. Allegation is made that Mr FT colluded with lawyers on the other side of the dispute. A failure by successive Standards Committees to uphold complaints of corruption, have resulted in allegation that Standards Committee members, together with staff of the Complaints Service, are involved in a pervasive web of deceit.

[103] At no stage did Mr and Mrs AB provide satisfactory or compelling explanation as to why so many individuals would compromise their professional reputations, or why so many disparate individuals would have a common malevolent objective of causing harm to them.

[104] I am reluctant to criticise Mr and Mrs AB. I am mindful that they have experienced considerable hardship as a consequence of the long running dispute they became embroiled in, but the intemperate, unrestrained, and at times perverse approach they have adopted to the pursuing of their complaint cannot pass without comment, particularly as the consequence of their unrestrained approach to the levelling of serious allegation, constitutes attack of the most serious kind, on individual reputations.

[105] Mr and Mrs AB’s corruption allegations do not present as a merely disproportionate or exaggerative response, the unfettered allegations are characterised by an intemperate extremity, a lack of supporting evidence, and a total disregard for the consequences that inevitably follow from the making of unbridled allegation of this degree of severity.

[106] It is unlikely that anything this Office says about either the motel litigation, or the actions of any lawyers who have had some professional involvement in that litigation (whether as counsel or as a member of a Standards Committee), will persuade Mr and Mrs AB that there was no conspiracy to deprive them of justice.

Theirs is a deeply held view. But deeply held views are not evidence of professional or ethical wrongdoing by a lawyer.

### *The Complaints Process*

[107] Intermingled with complaint against Mr FT, is argument that the Complaints Service failed to process their complaint appropriately. The complaints go beyond allegation of mere administrative failure. Allegation is made that the process is corrupt, and motivated by wish to conceal the corrupt practice of the lawyers complained about.

[108] Examination of the administrative processes of the Complaints Service is not the focus of this review, or indeed matters which properly fall within the jurisdiction of the LCRO when conducting a review where focus is on considering the conduct complaints levelled against the practitioner. Suffice to say that I discern nothing in the complaints of administrative misfeasance, that affect or have relevant influence on the conclusions reached in respect to the conduct inquiry.

### *Overcharging*

[109] Mr and Mrs AB did not pursue this issue at the review hearing.

[110] Mr FT has indicated that he has no intention to pursue recovery of the balance outstanding of his account.

[111] I have considered the accounts rendered by Mr FT, and have, from reading the extensive information filed, a good understanding of the extent of Mr FT's engagement in the litigation, the breadth of issues traversed, and the time spent. I conclude that the fees charged were fair and reasonable.

### **Conclusion**

[112] There is no credible evidence advanced by Mr and Mrs AB to support the pivotal allegation that underpins their complaint against Mr FT, being allegation that he was corrupt and dishonest in the manner in which he represented them.

## **Decision**

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

**DATED** this 30<sup>th</sup> day of June 2016

---

**R Maidment**  
**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr and Mrs AB as the Applicants  
Mr FT as the Respondent  
[City] Standards Committee  
The New Zealand Law Society