

CONCERNING

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the Canterbury - Westland Standards Committee

BETWEEN

JN

Applicant

AND

QQ

Respondent

DECISION

The names and indentifying details of the parties in this decision have been changed.

Introduction

[1] This is an application for review of a decision of the Canterbury-Westland Standards Committee which considered a complaint by JN (the Applicant) against QQ (the Practitioner). The Standards Committee resolved not to take any further action on the complaint and the Applicant seeks a review of that decision.

Background

[2] The Practitioner is a barrister who acted for the Applicant on a serious charge which was heard in the District Court at Christchurch in [...] 2008. The Applicant was convicted and sentenced to [...] imprisonment, with a non parole period [...]. The Practitioner appeared on his behalf at both the trial and sentencing.

[3] It seems that later that year the Applicant approached [another] barrister regarding a possible appeal. According to the Applicant that barrister "*did pursue some matters with the assistance of a private investigator*" but ultimately suggested that the

appeal be withdrawn at that time “*until new evidence arose*”. The Applicant has now been in prison for [several] years.

[4] In September 2011 the Applicant filed a formal complaint against the Practitioner, alleging that he “*failed to correctly and fully represent [him] at trial [...]*”. The detail of his complaint included that the Practitioner convinced him not to give evidence or call witnesses, that he “*failed to cross-examine the main witness or challenge her while [she was] in the stand*”, “*presented evidence of prior sexual abuse [of the complainant] by other people other than [the Applicant]*” that by implication reflected badly on his defence, and that the Practitioner “*colluded with [the] Prosecution to convict [him]*”. The Applicant also implied that the Judge was less than impartial because “*she had only recently left crown prosecution*”.

[5] The Practitioner denied the allegations made against him, pointing out that his physical files were presently inaccessible (understood to be due to the Christchurch earthquake). He submitted that if the Applicant alleged that his improper conduct led to the Applicant’s wrongful conviction then the proper course for him was to file an appeal against that conviction in the Court of Appeal.

[6] The Practitioner noted that the Applicant did not complain about him prior to sentencing at which he also represented him. He was aware that subsequently the Applicant approached another barrister as referred to above. His understanding was that “*the grounds of the possible appeal were similar to those set out in [the Applicant’s] complaint*”.

[7] In support of his denial of the specific complaints the Practitioner provided copies of various documents including written trial instructions signed by the Applicant, an application for disclosure of the complainant’s CYPS file, three detailed file notes, and his closing address notes. In summary the Practitioner said that he reviewed the Applicant’s defences with him, pointed out difficulties with the Applicant’s preferred defence, produced signed instructions not to call the Applicant nor other witnesses, pursued the CYPS disclosure matter, and discussed with the Applicant the issue of the Judge being a former crown prosecutor. He stated that he “*cross examined the complainant precisely as [the Applicant] instructed [him] to do*”.

Standards Committee Decision

[8] After briefly summarising the complaint the Standards Committee concluded that “*it was not [its] function...to review a complaint of this nature. The proper legal process for [the Applicant] to pursue should he wish to is by way of appeal to the Court*

of Appeal. Accordingly the Committee resolved...not to take any further action as there [was] an alternative avenue for this matter to be determined".

[9] The Committee relied on section 138(1)(f) of the Lawyers and Conveyancers Act 2006 (the Act) which is as follows:

A Standards Committee may, in its discretion, decide to take no action or, as the case may require, no further action, on any complaint if, in the opinion of the Standards Committee, - there is in all the circumstances an adequate remedy or right of appeal, ... that it would be reasonable for the person aggrieved to exercise.

Application for Review

[10] The Applicant has sought a review of the Standards Committee decision. As well as the Legal Complaints Review Office application form he has provided both a page re-stating his position, and later a formal two page submission. The theme of his complaint remains the same, namely, that the Practitioner failed to properly represent him and also "colluded with the Crown to secure a conviction". He repeats the specific complaints summarised above, adding several others including complaints relating to a named police officer and doctor who were involved in the investigation.

Review

[11] This review has been conducted "on the papers" in accordance with section 206(2) of the Act with the consent of both parties.

[12] It is the task of this office to review decisions of Standards Committees. The review considers the way that the Standards Committee dealt with the complaint, the evidence provided, the sufficiency of the enquiry and whether the Committee's decision was reasonably arrived at on the evidence.

[13] The review application did not address the Standards Committee's reason for dismissing his complaint, in particular that the Committee perceived that the Applicant had an alternative avenue for pursuing his complaint.

Considerations

[14] The matters raised by the Applicant for the review are the kind of matters that are routinely covered by appeals to a higher Court. I also noted that in his review application, the Applicant used phrases that are routinely used in appeals, such as, "*... the conduct of [the] trial and inadequacy of particulars establish a manifest injustice to the Applicant [apparel substituted for Appellant] and the Jury verdict and conviction*

therefore is unsound'. He described his objections to the 'new evidence' that the Practitioner had allowed the Crown to submit, and complained about the deficiencies in his defence.

[15] An appeal against a criminal conviction can include grounds of having been inadequately defended. If the Applicant had considered there to be a proper basis of an appeal on this ground, it was open to him to have pursued it. I note that the Applicant had discussed the possibility of an appeal with another barrister and that this did not proceed.

[16] A superior court that considers an appeal is best positioned to decide on the adequacy of a defence, and any procedural errors alleged to have occurred in the course of a criminal trial. The Practitioner has denied any wrongdoing. Given that the complaint rests solely on the perceptions of the Applicant, with no evidence to support the allegations, it is not clear how any disciplinary finding could be made against the Practitioner.

[17] The Standards Committee recognised this in deciding that the Applicant had alternative steps open to him to pursue his grievance about the way that the criminal trial had been conducted, namely, an appeal to the Court of Appeal.

[18] The core of the complaint is that the Applicant considers that there has been an injustice in his case. However, the Lawyers' Complaints Service is not the appropriate avenue for challenging criminal convictions.

[19] Having carefully considered all material on the file and the relevant law it is my view that the Standards Committee decision correctly dismissed the complaint pursuant to section 138(1)(f) of the Act.

Decision

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

DATED this 28th day of August 2012

Hanneke Bouchier

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:

JN as the Applicant
QQ as the Respondent
Canterbury - Westland Standards Committee
The New Zealand Law Society
Secretary for Justice (redacted)