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LCRO 05/2011

CONCERNING

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

AND

CONCERNING

a determination of the Taranaki Standards Committee

BETWEEN

MR GT

of [North Island]

Applicant

AND

MS TL

of [North Island]

Respondent

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

DECISION

[1] Complaints to the New Zealand Law Society were made by Mr GT (the Applicant) against three lawyers, each of whom had some association with his former employer. None of the complaints was upheld and the Applicant sought a review of all three Standards Committee decisions.

[2] This decision deals with the review application of his complaint against Ms TL (the Practitioner).

Background

[3] The Applicant was employed as the chief executive of a community organisation which was governed by a Board. In this role he received a complaint by a staff member which raised a personal grievance. In connection with this the Board sought the services of the Practitioner who was instructed to represent the Board. In this capacity she had dealings with the Applicant.

[4] The Practitioner's firm had previously acted for the Applicant personally in the 1990s in relation to a conveyance and a will. This was before the Practitioner had joined the firm. She herself had not acted for the Applicant in his personal capacity.

[5] In the course of her enquiries into the personal grievance, the Practitioner was sent certain information by other employees in connection with the matter, which led to other similar claims being made. The information raised concerns about the conduct of the Applicant. Thereafter the Board's enquiry became focused on his conduct, and eventually led to termination of his employment and membership of the organisation. The Applicant filed proceedings with the Employment Relations Authority and it appears that the dispute with his former employer was resolved by negotiation or mediation.

[6] The Applicant subsequently made complaints against the Practitioner and two other lawyers from her firm. The complaints were headed "*client conflict*" and "*betrayal of trust and confidence*". The Applicant contended that he was a client of the firm, and that by representing the Board and acting against him, the Practitioner (and others in the firm) were conflicted and in breach of their professional obligations to him.

[7] He further contended that when acting for the Board the Practitioner was at the same time acting for him. He referred to a meeting on 29 September 2008 that had been called to deal with an earlier personal grievance claim by a former employee. The meeting was attended by the Applicant and the Practitioner and also the Chair of the Board. At this time the Practitioner had stated that they were "*all on the same team*".

[8] The Standards Committee file records the extent of enquiry undertaken in respect of the complaints and it is clear that the parties had the opportunity of stating their position and responding to the comments of the other.

[9] The Practitioner denied any conflict of interest. She listed the dealings between the Applicant and the firm, the last contact said to have occurred in 1997, and were to do with property and the drafting of wills. The Practitioner denied that the Applicant was a current client of the firm at the time she took instructions from the Applicant's employer. She informed the Committee that the firm did not hold any information about the Applicant in relation to matters involving his employment.

[10] She rejected the contention that she (or the firm) were acting for the Board and the Applicant at the same time. With regard to the 29 September 2008 meeting she explained that the Board had fully accepted the Applicant's version of the events

concerning the employee's personal grievance and that the comment about "*all being in the same team*" was intended to reassure the Applicant that the employer saw the personal grievance claim as a mischievous attempt to undermine his (the Applicant's) authority. She further explained that the Board's support for him changed only after receiving subsequent correspondence from the aggrieved employee's lawyer and also from other former employees. The Board began a deeper investigation into the Applicant's management practices, and this eventually resulted in his suspension, at which time he obtained legal advice from another local firm. He did not approach the Practitioner's firm to act for him.

[11] The Practitioner said that the subsequent actions of the Board involved some minimal necessary email dealings with the Applicant in his role as the organisation's executive director, this being before the crucial board meeting in October. She stated she was not present at his disciplinary meeting later that month and did not see him again until the employment mediation some time later.

Standards Committee Determination

[12] The Standards Committee undertook an investigation of the complaints. Its decision of 18 November 2010 listed the Applicant's complaints, set out the factual background and then considered each of the seven identified complaints in detail. The Standards Committee summarised his complaints as follows:

- [a] The Practitioner acted against the Applicant, he being a client or former client of her practice (Rule 8.7.1);
- [b] The Practitioner betrayed a trust or confidence she had given the Applicant or he was entitled to expect (Rule 8.7);
- [c] The Practitioner used information she had received in confidence to the Applicant's detriment (Rule 8.8);
- [d] The Practitioner failed to honour an undertaking (Rule 10.3);
- [e] The Practitioner was in a situation of conflict (Rule 6.1);
- [f] The Practitioner's conduct became misleading and deceptive (Rule 11.1);
and

[g] The Practitioner alluded to a personal grievance against the Applicant that was not pursued, leaving him to speculate that it had been fabricated by her (Rule 2.3).

[13] The Committee did not agree that the Applicant was a current client of the firm. Its decision explained issues surrounding the duration of professional obligations following completion of a retainer, and also the continuing obligation of confidence beyond the life of the retainer. The Committee concluded that the firm held no information that concerned the Applicant's employment or that could be used against him.

[14] The Committee did not agree that the Applicant's role as representative of the organisation made him personally a client of the firm. The Committee accepted that all of the interactions between the Applicant and the Practitioner involved the business of the organisation. Having thoroughly reviewing the facts and the relevant particular rule applying to each complaint the Committee decided that it would take no further action pursuant to s.152(2)(c) of the Lawyers and Conveyancers Act 2006.

Review

[15] The application for review was made on several grounds.

[16] *Client of the Practitioner's firm:* The Applicant disagreed with the Standards Committee on the question of his being a client of the Practitioner's firm. He said he considered himself to be the firm's client, that he had expected that the firm would continue to deal with his legal requirements during his "various life transactions"; he had never been informed by the firm that he was no longer a client. His view was, in short, that his status as the firm's client remained current regardless of current instructions. He included an extract from a legal text (not referenced) which reads:

If the lawyer completed a single finite matter for the client, it is unlikely that any ongoing relationship should be inferred. But a lawyer or law firm that has regularly performed work for a client over a lengthy time still may be considered the client's lawyer even if no work has been sent to the firm recently. In such situations the reasonable belief of the client is perhaps the most important factors.

[17] The Applicant is mistaken in holding the view that the status of client continues indefinitely. Subject to certain qualifications (which were explained by the Standards Committee) there is no prohibition on a firm acting against an individual for whom it once acted. This is subject to an enduring obligation of confidence, because a lawyer cannot use information acquired in the course of a professional relationship against a former client. Those qualifications were clearly explained by the Standards Committee

in its detailed decision. The Committee's explanation set out the correct position. The Committee also concluded that none of the work undertaken by the firm in previous years concerned his employment with the Board. This is not refuted by the Applicant.

[18] *Acting for the Applicant and Board at the same time:* The Applicant said he relied on his 'lay person's' interpretation, and described the Practitioner's statement about all being on the same team as an 'undertaking' by the Practitioner. He argued that this resulted in a professional obligation owed to him as well as the Board.

[19] The Standards Committee did not accept that there was any personal interest of the Applicant that was involved in the Practitioner's meetings with the employer Board, taking the view that the Practitioner was solely there to represent the Board. The Committee provided a full explanation for its decision that the Practitioner was not at any time representing the Applicant in his personal capacity.

[20] In my view this was the correct approach. The meeting concerned a personal grievance against the employer Board by one employee. The Applicant was inevitably involved in the meeting as he was chief executive officer for the Board. The matter then under consideration did not involve the Applicant's '*own situation*' but that of the Board as employer vis a vis the aggrieved employee. The Practitioner was representing the Board and there was nothing at that time to suggest that the Applicant would himself come under scrutiny.

[21] *Misleading and deceptive conduct:* The Applicant had also alleged misleading and deceptive conduct on the part of the Practitioner. This concerned the fact that he had been called to a meeting at a later time to discuss his own conduct. He considered that he was "*led to the meeting under false pretences*", having been "*deliberately led to believe the meeting was to discuss progress with the other staff employment issues...*"

[22] The Practitioner had informed the Committee that concerns about the Applicant's management style as chief executive officer had arisen subsequent to the inaugural meeting. The Practitioner explained that she was acting for the employer Board and it was part of her professional role to provide advice about employment matters.

[23] The procedures used by the Board to address its employment concerns about the Applicant are not matters that the Practitioner is required to answer. If there were any procedural omissions it is to be assumed that these were addressed in the course of the employer's enquiry during which, as it appears, the Applicant was legally represented by another law firm.

[24] Having read all of the information I can see no basis for taking a different view to that taken by the Standards Committee. The evidence clearly supports the Practitioner's explanations, and again I refer to the Committee's full and detailed explanation for the views it took.

[25] Although the Applicant disagreed with the Committee's view that he could not reasonably have been under the impression that the Practitioner was acting for him personally, the Applicant overlooks the distinction between his role as the authorised person representing the employer Board on the one hand, and his personal position as an employee on the other. Nor is this a matter to be determined on the basis of a complainant's own belief. There are clear demarcations surrounding the duties of lawyers in relation to clients and former clients.

[26] The evidence is clear that the Applicant's involvement was solely in his capacity as the senior executive officer of the Board. He was the Board's employee. The Board instructed the Practitioner in respect of employment related matters, initially involving another employee and later involving the Applicant himself. The fact that the Practitioner had had prior communication with the Applicant did not alter his status as an employee, or the Practitioner's status as legal adviser to the Board.

[27] A final ground for his review application essentially focused on what he perceived as an unfair process in his own personal grievance against the employer. He expressed surprise that the Standards Committee had not commented in this aspect of the complaint.

[28] The jurisdiction of the New Zealand Law Society does not extend beyond the professional conduct of lawyers. It would have been inappropriate for the Standards Committee to have commented on any matters outside of the professional conduct of the Practitioner.

[29] The disciplinary machinery of the New Zealand Law Society is concerned only with the professional conduct of lawyers. Complaints against others (individuals or corporate entities) that do not come under the jurisdiction of the New Zealand Law Society cannot be dealt with in this process. It is material to mention this as it appears that the Applicant is seeking to "*remedy all failures of natural justice*", noting that much of his grievance is against his former employer.

[30] After careful examination of the complaints the Committee reached conclusions which are detailed, and provided a clear basis for its finding that the Applicant was not a client of the Practitioner or her firm, and that the Practitioner had breached no rules of

professional conduct. In the course of my review I have considered all material contained in the New Zealand Law Society's file and that supplied by both parties for the review.

[31] I have also given careful consideration to the views of the Applicant. However, I fully support the conclusions reached by the Standards Committee which is fully supported by the evidence. I note that much of the Applicant's grievance rests on his mistaken view of the law and the professional obligations of lawyers. The review application is declined.

Decision

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

DATED this 20th day of January 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:

Mr GT as the applicant
Ms TL as the respondent
Taranaki Standards Committee
The New Zealand Law Society