

LCRO 06/2011

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

MR TK

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 from the same law firm, each of whom had some association with his former employer. None of the complaints were 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 Mr TK (the Practitioner).

Background

[3] The Applicant was employed as the chief executive of a community organisation which is governed by a Board. The Practitioner was a member of the employer Board. His firm also acted for the Board.

[4] In his role as chief executive the Applicant received, and was required to deal with, a complaint by a staff member which raised a personal grievance. In connection with this the Board sought the services of a lawyer from the Practitioner's firm.

[5] Later, following more information from other former employees being sent to the lawyer, the Board came to question the management style of the Applicant and this led to further enquiry which eventually led to the termination of the Applicant's employment. That same lawyer continued to represent the Board in the matter involving the Applicant's employment.

[6] On 8 April 2010 the Applicant complained to the New Zealand Law Society (NZLS) about the three practitioners who had had some involvement with, or connection to, his dismissal and termination of his membership of the organisation. He claimed that the practitioners ought not to have acted against him as he was a client of the firm. He alleged conflict of interest and betrayal of trust and confidence.

[7] Each of the lawyers had a different role in the matter. This review relates to the Standards Committee decision on the complaint against the Practitioner who was a member of the Board, and who had evidently written the letter of dismissal. The Practitioner had played no part in the Applicant's dismissal, but had written to the Applicant on 20 November 2009 informing him that he (the Practitioner) was a "new member of the Board" who had "delegated responsibility to write to (the Applicant)". The Practitioner had only recently joined the Board and there is no evidence of the Practitioner ever having met the Applicant or having acted for him in a professional context.

[8] The Practitioner addressed the Applicant's complaint of conflict, on the basis of claiming that he was a client of the law firm, by setting out the history of the firm's dealings with the Applicant, and noting that not only had he joined the firm after its last involvement with the Applicant some 12 years earlier, but that he had never met or spoken to him. His submission was that the Applicant was not a current client of the firm at the material time and that he (the Practitioner) never held any information that came from a former solicitor/client relationship.

[9] The Standards Committee received further comments from the Applicant and also received comments from the other lawyers complained of who supported the Practitioner and rejected any wrongdoing.

Standards Committee Determination

[10] The Standards Committee Notice of Determination dated 18 November 2010 clarified the Applicant's complaints as follows:

[a] The Practitioner acted against the Applicant, he being a client or former client of his practice (Rule 8.7.1 of the Lawyers:Conduct and Client Care Rules 2008 [the Rules]); and

[b] The Practitioner acted in a situation of conflict (Rule 6.1)

[11] The Committee set out the factual background, applied the relevant rules to the facts and then considered each complaint thoroughly. After doing so the Committee decided that it would take no further action pursuant to s.152(2)(c) of the Lawyers and Conveyancers Act 2006. It also determined that its findings should not be published, thereby protecting the privacy of both parties.

Review

[12] In his Application for Review dated 5 January 2011 the applicant sought the following outcome: (i) “reason for termination of membership to be provided. (ii) opportunity to respond provided. (iii) membership termination to be revoked & expunged from records”.

[13] His supporting reasons were, first, repeating his belief that he was an existing client who was being acted against, and second, alleging that he was denied natural justice in the process of his membership being terminated.

[14] It is the function of this office to review decisions of Standards Committees. This task involves consideration of whether the Standards Committee’s determination appears to be correct on the basis of the evidence, its understanding of the complaints, and the application of the relevant professional standards and procedures. It recognises that Standards Committees are made up of experienced lawyers, together with a non legally-qualified representative of the community.

[15] In this case the Committee has carefully and extensively considered the Applicant’s complaints, applied the relevant rules to the facts and reached conclusions which are detailed and compelling. It rejected the Applicant’s complaints.

[16] The Applicant has not explained why he considers the Standards Committee decision to be wrong. That is, he reasserts his belief that he was an existing client of the Practitioner’s firm at the time it acted for the community organisation against him, but this does not directly address the reasons for finding otherwise as the Standards Committee set out in its determination.

[17] In its twelve part detailed analysis of the relevant Conduct and Client Care rule (in paragraph 4.0 of the determination) the Committee applied the rule to the facts and ruled out any breach of Rule 8.7.1. Specifically it found that the Applicant's client/solicitor relationship with the firm ended with the execution of his will in 1997. It went on to examine whether the four "arms" of Rule 8.7.1 (which set out a lawyer's obligations to a former client) applied in this case and concluded that they did not. The Committee was also decisive in rejecting any suggestion of conflict in the Practitioner acting for the community organisation.

[18] The essence of the review application appears to be the Applicant's dissatisfaction with the fact of his dismissal. He claims that the processes leading to this and the termination of his membership were flawed. This is not a matter that can be dealt with through the disciplinary machinery of the NZLS. I note that he was represented throughout the personal grievance with his employer Board and that a negotiated outcome was reached.

[19] I have carefully examined all material supplied by both parties and contained in the NZLS file, including the Standard Committee's determination, and cannot fault the Committee's process or conclusions. The Applicant has received a full explanation for the Committee's decision. The Committee found no breaches and there is no basis for me to take a different view. The application for review is declined.

Decision

Pursuant to section 211(1) of the Lawyers and Conveyancers Act 2006 the decision of the Taranaki Standards Committee 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
Mr TK as the Respondent
Taranaki Standards Committee
The New Zealand Law Society