

CONCERNING

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

AND

CONCERNING

a determination of the Wellington Standards Committee

BETWEEN

ND

Of Auckland

Applicant

AND

VC

Of Auckland

Respondent

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

DECISION

Background

[1] Mr ND (the Applicant) had sent an invoice to A for services rendered. A took that letter to his lawyer, VC (the Practitioner), who in turn wrote a letter to the Applicant which included the following paragraph:

“If you persist in making these claims against A then my instructions are to alert the relevant officials in the responsible Ministry about your behaviour, which is plainly in contravention of section 8 and 9 of the Unsolicited Goods and Services Act.”

[2] The Applicant objected to this language and filed a complaint with the New Zealand Law Society. He contended that the Practitioner had breached Chapter 2 of the Rules of Conduct and Client Care, in particular Rule 2.7 which states:

A lawyer must not threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for an improper purpose.

[3] The Standards Committee considered, but declined to uphold, the complaint. After setting out the relevant positions of the Applicant and Practitioner, the Standards Committee explained why it was of the view that there had been no breach of Rule 2.7. The Committee did not consider that any threat was made, its view being that the letter merely pointed out the classes of action open to the lawyer's client.

[4] The Committee explained that the rule was aimed at situations where a threat was made for an improper purpose such as threatening to disclose matters to the police or sending letters which constituted blackmail. The Committee noted that the Practitioner had not personally made the threats, but had acted on the instructions of his client. Although the Applicant had succeeded against A in the Disputes Tribunal, the Committee noted that this occurred sometime after the Practitioner's letter had been written.

Review Application

[5] The Applicant considered that the Practitioner had judged him as guilty of seeking payment for unsolicited services, stating:

"His rush to judgment saying I was guilty, or to use his words "plainly in contravention of section 8 and 9" ... is a total falsehood, I was never in contravention of this Act and interesting enough this Act was not even mentioned at the Disputes Tribunal hearing, by his client (A)."

[6] He objected strongly to the Practitioner making false, groundless statements about his professional operations which had no substance, and making a threat. The Applicant said he felt sickened when he read the Practitioner's comments and felt shocked that the matter might be referred to the Ministry when he had done nothing wrong.

[7] The Practitioner responded to the review application, denying that he had made false, groundless statements about the Applicant's professional operations, claiming that all he said was that the Applicant was making claims for payment for services that had not been contracted for, which remained his position. The Practitioner submitted that his correspondence ought to be read in the context of acting for a Crown entity and trying to protect it from devoting further time and resources in dealing with the

Applicant's claims for payment for services that had not been contracted for. With reference to the Applicant's successful outcome at the Disputes Tribunal, the Practitioner noted that A's agreement to make payment was without admission of liability, and it remained his client's position that it had no legal obligation to pay but that payment was the most economically efficient way of dealing with the resource-intensive problem.

[8] The Applicant responded to the Practitioner's comments. His main focus appeared to be on what he perceived as the Practitioner judging him to be guilty of a breach of the Unsolicited Goods and Services Act. He said he felt intimidated and bullied by the Practitioner's letter, and saw the Practitioner's correspondence as an attempt to shut down a very legitimate claim he was making by falsely contending he was in breach of the law.

[9] The Applicant noted that no-one had produced any evidence at all that he was in breach of the Act, and submitted that at the Disputes Tribunal, A had admitted liability, that the adjudicator had agreed that he was entitled to payment for his services and that A's agreement to pay his invoice was, in his view, prompted to avoid the adjudicator making a ruling on the invoice.

[10] This review has been undertaken on the papers pursuant to section 206 of the Act. The parties have consented to this process, which allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all the information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

Considerations

[11] Much of the Applicant's information provided for the review dealt with his justification for the claim he was making against A. My focus, however, is whether any disciplinary consequences arise from the Practitioner's letter. The particular issue is whether the letter sent by the Practitioner was a breach of Rule 2.7.

[12] It is understandable that the Applicant may have been distressed by the letter sent to him by the Practitioner which was written in robust terms. However, in the context of the adversarial legal system that operates in New Zealand, it is by no means uncommon that a lawyer will make efforts on behalf of his client to deter a claim against the client where the client contends that liability is disputed

[13] There is nothing to suggest that the lawyer's instructions from A were anything other than disputing liability for the Applicant's invoice. It is difficult to see any objection to the Practitioner attempting to ward off legal action proposed by prospective claimant. This can, of course, not be done by any means whatsoever but, in this case, I can find no part of the Practitioner's letter that amounts to any kind of threat to make an accusation against the Applicant for an improper purpose. The Practitioner was entitled to assert his client's position, and the fact that he did so in the letter could not, under any circumstances, amount to a judgment on the Practitioner's part, but simply an assertion by the client.

[14] It is abundantly clear that the purpose of the lawyer's letter was to seek to deter the Applicant from pursuing the claim that was disputed by his client. There was nothing unlawful, or in breach of the Rules, in the way that the Practitioner went about this by writing in robust terms.

[15] It seems to me, in reviewing the material, that the Applicant's distress arises from the Practitioner having judged as unlawful, a claim which the Applicant subsequently succeeded in having paid to him. It is not the role of the lawyer to adjudicate on the merits of the Applicant's claim, which is a matter for the courts (or a Disputes Tribunal), and I do not see that the Practitioner was doing anything more than asserting the position as his client saw it. At the time that the Practitioner wrote his letter, the outcome of the Applicant's Disputes Tribunal claim was not known, and although the Applicant considers that the claim was entirely legitimate, and has indeed succeeded in obtaining payment from A, at the time of the Practitioner's letter, the Practitioner's client was contesting the legitimacy of it, and, contends the Practitioner, still disputes liability despite the settlement that was reached.

[16] Having considered all of the circumstances, I consider that the Standards Committee was correct in deciding to take no further action against the Practitioner.

Decision

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

DATED this 15th day of June 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:

ND as the Applicant
VC as the Respondent
The Wellington Standards Committee
The New Zealand Law Society