

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

MR PONTYPRIDD

of North Island

Applicant

And

MR RENFREWSHIRE

of Christchurch

Respondent

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

DECISION

[1] The Applicant and the Respondent are both lawyers who represented clients involved in litigation against each other. Certain events led to each of the lawyers becoming involved in lodging a complaint against the other to the New Zealand Law Society. This review relates only to the Standards Committee determination that the Applicant breached Rule 10.1 of the Lawyers Conduct and Client Care Rules.

[2] The Standards Committee determined the complaint on 21 December 2009. On that same day the Applicant and Respondent, and their respective clients, appear to have reached agreements, including an agreement that the complaints against both of the lawyers would be withdrawn. On 31 December 2009 the Applicant wrote to the Standards Committee advising that *“settlement of all matters between the parties was reached which included the respective Law Society complaints”* and that the complaints

against the lawyers were withdrawn. He asked for the matter to be referred back to the Committee for reconsideration.

[3] On 19 January 2010 the Applicant was informed that the complaint had been referred back for reconsideration, and that the Committee's view was, subject to his rights of review, that its determination was final. The Committee suggested that the appropriate course would be for the Applicant to seek a review by this office.

Background

[4] The brief background is that the Respondent's staff solicitor had written directly to the Applicant's client at around the close of day on Friday, 7th August 2009. The clients were concerned on receiving the letter and contacted the Applicant. The next day the Applicant made a formal complaint to the New Zealand Law Society in respect of the direct contact with his client, and the content of the letter. On the same day he also wrote to the Respondent referring to a 'threat' made to his client. He added, "*my client especially reserves his rights with respect to any criminal proceedings.*" The Respondent subsequently filed a formal complaint alleging a breach by the Applicant of Rules 2.7, 10.1 and 13.8 of the Conduct and Client Care Rules 2008.

[5] The Standards Committee resolved to enquire into the complaint pursuant to section 137 of the Lawyers and Conveyancers Act 2006 and set the matter down for a hearing. Submissions were received from both lawyers. After considering the evidence the Committee found that the Applicant had breached Rule 10.1 of the Rules, and concluded that there had been no breach of Rule 13.8. No determination was made in relation to the alleged breach of Rule 2.7, but Committee nevertheless expressed a view in relation to that complaint.

Grounds for review

[6] A 'key' reason for the review application related to the fact that both lawyers had advised of the withdrawal of their complaints against the other, a factor that, in the Applicant's view, ought to have led to a reversal of the Committee's decision. Referring to procedural matters he noted in particular that a considerable time had elapsed between the dates that the complaints were made, and the Committee reaching a determination. He viewed the delay as prejudicial, adding that a more timely procedure may have been material to the resolution.

[7] The substantive ground for the application was, in essence, that the Practitioner disagreed with the Committee's conclusion, which he considered to be erroneous.

[8] The parties were informed that this was a matter that could be determined on the papers (section 206(2) of the Lawyers and Conveyancers Act 2006), but they were also advised that they were entitled to be heard should they wish. The Applicant sought a hearing of all matters, including those leading to the complaints having been made. The Respondent advised that he had no wish to be involved in the matter. There was no basis for compelling the Respondent's attendance and the Applicant was informed of the Respondent's advice that he wished to have no further involvement.

[9] I heard from the Practitioner by way of a telephone hearing on 7 April 2010. Although he had suggested that the Standards Committee had 'purported' to make a decision, he accepted that the Committee's decision had indeed already been issued before the withdrawal of complaints had been notified to the Committee. In these circumstances I could see no error in the Committee's advice to the Applicant that its determination was final, and that the lawyer should pursue his right of review.

[10] The Applicant explained why, in his view, the Committee had erred in finding against him. He reiterated the view he had put to the Standards Committee that the letter sent by the Respondent's staff solicitors was an *'attempt to coerce my clients by corresponding with them directly, at 5pm on a Friday evening, requiring them to given an undertaking with regard to vague and unspecified material or else threatening court action.'* He submitted that this could well come close to the definition of blackmail in terms of s. 237 of the Crimes Act 1961. He considered that the letter was at the very least designed to be intimidatory. In these circumstances he considered that his letter of reply was justified. He considered the Committee was in error in making a finding that there was no criminal action open but only civil action. He asked that his response letter be considered in the light of the letter that his clients had received.

[11] The allegation against the Applicant was that he had, 'without foundation', made serious allegations of a criminal nature and had made an implied threat to take criminal action against the Respondent's staff solicitor. This had led to a complaint that the Practitioner had breached Rule 2.7 of the Lawyers: Rules of Conduct and Client Care. This rule 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 any improper purpose.

[12] The Standards Committee had expressed the view that '*a clear threat of criminal action was made...*' in the Applicant's letter to the Respondent's staff solicitor '*when the only legitimate action was through civil proceedings.*' Despite this observation, the Committee did not find that there had been a breach of Rule 2.7. The Committee did, however, determine that there had been "a clear breach" of Rule 10.1 This Rule states:

A lawyer must treat other lawyers with respect and courtesy.

[13] The issue for the review is whether the Committee's determination, that the Practitioner breached Rule 10.1, should stand. I have examined the letters involved in this matter, and the various responses (including submissions) by each of the Practitioners to the Standards Committee, and for this review. In short, the Applicant considered his response letter was justified in the circumstances.

[14] In my view the Applicant's letter was clearly intended to intimidate the staff solicitor. I do not agree with the Practitioner's perception that it was an appropriate response in the circumstances. It is not an answer to point to the improper or wrongful conduct of another lawyer to justify one's own. While surrounding factors may have some relevance in certain circumstances, each lawyer is answerable for his or her own conduct, including the manner in which he or she responds to the actions by, or communications (even when they are wrongful) from, colleagues.

[15] The Applicant was entitled to feel indignation at the conduct of the Respondent's staff solicitor in having directly contacted his client in the way that she did, but he had a clear remedy and he exercised that remedy with a complaint to the New Zealand Law Society. In my view the Practitioner's response to the Respondent's staff solicitor was inappropriate, and I accept that the Committee's view that there had been a clear threat made by the Applicant was reasonably supported by the evidence. Despite its concerns about the Practitioner's conduct, it appears that the Committee did not consider that it reached the threshold for a finding in relation to Rule 2.7. On the evidence it was open to the Committee to take that view.

[16] The Standards Committee has the function of considering complaints in relation to the rules of professional conduct, and to make determinations in respect of those rules. This involves assessing the conduct complained of against the applicable professional standards. It is clear that the Committee had concerns about the Practitioner's letter and that despite concluding it did not reach a threshold for a finding in relation to Rule 2.7, the Committee determined that there had been a clear breach of Rule 10.1 by the Practitioner. I am in full agreement the Committee's determination. This application is declined.

Decision

Pursuant to Section 211(1) the determination of the Standards Committee is confirmed.

DATED this 12th day of April 2010

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 Pontypridd as the Applicant
Mr Renfrewshire as the Respondent
The Standards Committee
The New Zealand Law Society