

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 TJ

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 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 TJ (the Practitioner).

Background

[3] The Applicant was employed as the chief executive officer of a community organisation which was 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. When more information

was subsequently provided to the Practitioner by other former employees, the Board began to question the management style of the Applicant and this led to further enquiry which eventually led to the termination of his employment. That same lawyer continued to represent the Board in the matter involving the Applicant's employment.

[5] The Practitioner's connection with the above was the fact that he was a Board member. There was evidence that the Practitioner had, on two previous occasions, interacted with the Applicant in connection with Board matters. One involved a lease. The other concerned advice that the Applicant sought about who in the organisation was the 'employer'; it appears that the Applicant did not agree with the Practitioner's view that the Board was the employer. The Practitioner's involvement with any employment matters was minor and peripheral, although it appears that he was present when the Applicant was requested to hand over his keys etc when his employment was terminated.

[6] The Applicant filed complaints against several lawyers from the Practitioner's firm, including the Practitioner. He argued that he was a client of the Practitioner's firm and that the Practitioner ought not to have acted against him in the employment matter involving him. In claiming to be a client of the firm, he relied on legal work done for him by the law firm, his belief that he was a client and his expectation that they would always be the firm he would use for any future requirements. He further supported his claim to be a client by reference to his interactions with the Practitioner in respect of Board matters, including the employment issues. He contended that his position as 'primary representative' of the Board meant that he was also to be considered as the client.

[7] The complaints were investigated by the Standards Committee, its processes ensuring that all information and responses provided by each of the parties was forwarded to the other with an opportunity to respond. Submissions had also been forwarded by other lawyers in the Practitioner's firm, these also being sent to the Applicant for comment.

Standards Committee Determination

[8] The Standards Committee Notice of Determination dated 18 November 2010 identified and listed the Applicant's complaints, set out the factual background and then considered each of the three complaints in considerable detail.

[9] The Standards Committee summarised his complaints as follows:

- [a] The Practitioner acted against the Applicant, he being a client or former client of the Practitioner's practice (Rule 8.7 or 8.7.1);

[b] The Practitioner was in a situation where his duties to his clients put him in conflict (Rule 6.1);

[c] The Practitioner's position as a member of the community organisation's board brought him into a position of conflict (Rule 6.4).

[10] After thoroughly reviewing the facts and the relevant 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. It also determined that its findings should not be published, thereby protecting the privacy of both parties.

[11] The Standards Committee provided a lengthy and detailed decision in which it provided comprehensive reasons for not upholding the complaints. The Committee noted that the firm had not acted for the Applicant in any personal matters for some 12 years, and that any knowledge that it had about the Applicant's affairs were unrelated to the employment issues he subsequently faced. The Committee did not agree that any conflict existed on that ground to prevent the Practitioner's firm acting for the organisation and against the Applicant.

[12] The Standards Committee also considered the interaction that had occurred between the Practitioner and the Applicant was in his role as executive officer of the organisation and concerned the business of the organisation. The Committee did not agree that any part of the interactions involved matters personal to the Applicant. In a detailed decision the Committee explained its reasons for taking the view that the Applicant's position as chief executive officer did not make him a client.

Application for Review

[13] In his Application for review the Applicant sought the following outcome: (i) "independent investigation into conduct of Board and all lawyers involved, 2008 and 2009. (ii) remedy all failures of natural justice". He attached six pages of supporting reasons which largely repeat his position and earlier submissions.

[14] He raised many additional issues that were directed at his former employer, raising what he considered were unfair procedures in his dismissal.

Discussion

[15] 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.

[16] The Standards Committee decision included detailed reasons for declining to uphold any of the complaints against the Practitioner. The Committee described the Applicant as a 'former client' of the firm and outlined the nature of the residual obligations owed by a lawyer (or firm) to a former client. The Committee could see no objection to the Practitioner's firm acting for the Board as the firm had not acted for the Applicant in about 12 years.

[17] I accept that the Standards Committee was correct in the view that it took. The Applicant's belief that he remained a client of the firm is immaterial. The lawyer-client relationship does not endure forever. The Standards Committee's explanation about the nature of the relationship was correctly set out in its decision.

[18] I also agree that the Committee was correct in the view that the Practitioner's involvement or advice, in relation to the lease for the Board, and concerning the question about who in the organisation was the 'employer', did not create a professional relationship between the Practitioner and the Applicant in his personal capacity. The Applicant was aware of the Practitioner's position as a member of the Board, and there is nothing to indicate that the issues arose in any context other the Board-related matters.

[19] The Applicant has difficulty in accepting that the relationship that existed between himself and the Practitioner did not give rise to professional obligations on the part of the Practitioner towards him personally. He referred to the frank disclosures he had made to the Practitioner in the course of their respective roles, and considered that some information that had been exchanged was later used against him. In holding this view the Applicant overlooks the fact that in the context of these exchanges the Practitioner was wearing the "board member" hat, and that any information exchanged was the property of the Board.

[20] The fact that the Applicant may have had frank discussions with the Practitioner, or disclosed matters that he later came to regret, makes no difference where these exchanges involved work-related matters. This did not make the Applicant a personal client of the Practitioner. Nor is it material that the Applicant may have believed that he was "part of the (organisation) client", a belief evidently based on his position as the authorised representative of the organisation. The Applicant was at all times an employee of the organisation. In that context there is no basis upon which he could claim an independent personal professional relationship with the Practitioner, or anyone in the Practitioner's firm who represented the employer.

[21] The Applicant's criticism of procedural issues surrounding the termination of his employment are not matters that can be addressed by the disciplinary machinery of the New Zealand Law Society, whose sole function is to consider complaints against lawyers in relation to professional conduct matters. It is beyond the jurisdiction of Standards Committees to comment on matters that involve a complainant and his employer, which in any event in this case have been addressed through other processes.

[22] I have carefully read and considered all material supplied by both parties contained in the New Zealand Law Society file, and the reasons for the review application. I have not considered it necessary to repeat each element of the discussion, noting that the Committee provided a full and detailed explanation to the Applicant. I confirm that the Committee's reasoning on all matters is correct. 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 TJ as the respondent
Taranaki Standards Committee
The New Zealand Law Society