

**LEGAL COMPLAINTS REVIEW OFFICER  
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2022] NZLCRO 062

Ref: LCRO 100/2021

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of [Area] Standards Committee

**BETWEEN**

**QT**

Applicant

**AND**

**RIGHTEOUS LAW LTD<sup>1</sup>**

Respondent

**With the exception of Righteous Law Ltd all names and identifying details of the parties in this decision have been changed.**

**Introduction**

[1] Ms QT has applied for a review of the determination by [Area] Standards Committee to take no further action on her complaint, which was processed as being a complaint about Ms PS. In reviewing the complaint and all documentation submitted with the complaint and on review, I have formed the view that the correct party complained about should be recorded as Righteous Law Limited. The reason for doing so is set out below.

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<sup>1</sup> The respondent has been amended to Righteous Law Ltd. See [2]–[9].

*Preliminary decision as to parties*

[2] In February 2017, Mr JV, a director of [AB] Legal Limited, lodged a complaint with the Lawyers Complaints Service on behalf of his client, QT. He named PS of Righteous Law as the lawyer subject to the complaint.

[3] Mr JV's supporting information made reference on a number of occasions to Ms PS and/or Righteous Law, and also referred to KG, a lawyer employed by the firm. Throughout the complaint, Mr JV referred to the party complained about as being 'Righteous Law'.

[4] The Committee processed the complaint as being against Ms PS. However, in the course of conducting this review, it became apparent that Righteous Law is an incorporated law firm, Righteous Law Limited. Although Ms PS was named as Ms QT's lawyer on the Agreement for sale and purchase referred to in this decision, the matter was allocated to KG and his team.<sup>2</sup> Much of the work on Ms QT's file was carried out by Mr KG and his team. Another director of the firm, Mr LD, signed the certificate to [Bank A] New Zealand Limited ([Bank A]). Consequently, Ms PS herself is not the person responsible for much of the conduct under consideration in this review.

[5] Section 132(1)(a) of the Lawyers and Conveyancers Act 2006 enables complaints to be made against an incorporated law firm. In the circumstances, I formed the view that the correct party to be subject to Ms QT's complaint should be Righteous Law Limited.

[6] On 1 June 2022, I wrote to the parties and their counsel requesting them "to confirm that the review may proceed as the review of a determination in respect of conduct by Righteous Law Limited, and acknowledge that the determination of the Committee will be modified accordingly".

[7] Both parties agreed to this proposal.<sup>3</sup>

[8] Consequently, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee is modified to effect the change of the name of the lawyer complained about from Ms PS to Righteous Law Limited.

[9] As a result, the respondent in this review becomes Righteous Law Limited.

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<sup>2</sup> Letter PS to Lawyers Complaints Service (19 March 2021).

<sup>3</sup> Emails CU ([CD Law]) (1 June 2022).  
AW ([AB] Legal Limited) (1 June 2022).

## Background

[10] On 28 September 2020, Ms QT entered into an Agreement to purchase a property at [Property 1 address]. Ms QT was referred by the agent to PS and the Agreement was sent to Ms PS on the day it was signed. Ms PS advises<sup>4</sup> that the instructions were referred to Mr KG and his team.

[11] The property purchased by Ms QT was a section in a subdivision on which a house was under construction. The settlement date was to be 30 October 2020 or five working days after issue of the code compliance certificate, whichever was the latter.

[12] The Agreement was subject to finance being approved within five working days of the date of the Agreement and this condition was duly satisfied by an offer of finance from [Bank A]. All other conditions in the Agreement were also satisfied.

[13] Mr JV says that “the code compliance certificate appears to have been issued on 23 October 2020”.<sup>5</sup> The settlement date was therefore 30 October 2020.

[14] During the course of preparing the Landonline workspace, it became apparent that there was a prior dealing to be registered before the transfer to Ms QT and the mortgage to [Bank A] could be registered. In an email to the vendor’s solicitor on 16 October 2020, Mr KG said:

Kindly note that LINZ has identified this property as having a pending dealing.

[15] The vendor’s solicitor replied:<sup>6</sup>

I have looked into the lodged dealing ... and the extinguishment of easement instruments ... appear to affect our client’s property.

I don’t think I am in a position to do anything to the prior dealing.

As a result of that our e-dealing will also be lodged in second order after settlement.

[16] On 30 October 2020, Righteous Law paid over the sum of \$1,242,315.04 to the vendor’s solicitor, being the balance to settle, and the vendor’s solicitor released the documents as required by cl 3.8(2) of the Agreement for sale and purchase.

[17] The documentation to effect the sale to Ms QT and register the mortgage to [Bank A] then became queued after the prior dealing.

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<sup>4</sup> Above n 2.

<sup>5</sup> Letter in support of complaint, JV to Lawyers Complaints Service (17 February 2021). Ms PS has advised it was issued on 16 October.

<sup>6</sup> Email FL to KG (27 October 2020).

[18] The prior dealing, being the extinguishment of an easement as referred to by the vendor's lawyer, was not registered for some time and consequently registration of the transfer to Ms QT was also delayed. The extinguishment of the easement was entered on 29 January 2021, thereby enabling the transfer to Ms QT and the mortgage to [Bank A] to proceed. These are recorded as being registered on 30 October 2020.<sup>7</sup>

[19] Ms QT did not become aware that she was not registered as the proprietor of the property until December 2020 when talking to her neighbour, who advised her that he had not settled pending registration of the prior dealing.

[20] After making enquires of Mr KG, Ms QT then engaged [AB] Law Limited "to investigate the matter and take steps to accelerate registration of the transfer and mortgage".<sup>8</sup>

[21] Mr JV advises that both dealings were processed on 4 February 2021.<sup>9</sup>

### **Ms QT's complaints**

[22] As noted, Mr JV lodged the complaint on behalf of Ms QT. The complaint takes the form of 'drawing to the Law Society's attention' the matters referred to, leaving the Standards Committee to identify the issues and rules and/or sections of the Act which Righteous Law may have breached.

[23] The matters Mr JV refers to are:

- "Despite not being able to transfer legal title or register [Bank A]'s mortgage, Righteous Law completed settlement anyway".<sup>10</sup>
- Undertaking to [Bank A]:<sup>11</sup>
  - (a) That it was not aware of anything which would prevent [Bank A]'s mortgage in relation to the Property being registered and obtaining the priority required by [Bank A];
  - (b) That it has obtained the releases of, or satisfactory undertaking to provide releases on settlement in respect of, all encumbrances registered against the Property; and
  - (c) That it will promptly lodge or submit all documents to be registered and forward [Bank A] a post registration search copy of each record of title.

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<sup>7</sup> The documents were lodged on 30 October 2020.

<sup>8</sup> JVs letter to Lawyers Complaints Service, above n 5, at [16].

<sup>9</sup> The historical search of the title records that the extinguishment of the easement was entered on 29 January 2021.

<sup>10</sup> Above n 5 at [9].

<sup>11</sup> At [10].

- We have reviewed Righteous Law's file ... and cannot see what steps if any were taken to investigate the prior dealing and its potential impact on the transfer of title to Ms QT. FL & Partners on 27 October 2020 advised that it had looked into the prior dealing and simply advised that they were related to the extinguishment of an easement instrument that "appear to affect our client's property".<sup>12</sup>
- Righteous Law appears to have failed to seek instructions from Ms QT and [Bank A] with respect to the potential risk and delay in completing the registration of the transfer and mortgage. Even had there been an acceptable risk, Righteous Law appears to have failed to secure the appropriate undertakings to protect Ms QT and [Bank A].<sup>13</sup>
- Ms QT was unaware that registration of the transfer had not been processed and the vendor remained the registered proprietor of the property until February 2021.

[24] The outcome Ms QT seeks is:<sup>14</sup>

1. An apology from Righteous Law;
2. Compensation from Righteous Law, equivalent to the penalty interest [she] considers she would have been entitled to, due to late settlement on the vendor's part, had she been given the chance to defer settlement, calculated to be \$55,011.96, being penalty interest for 97 days (from 30 October 2020 to 4 February 2021) at 15% p.a. for the settlement funds of \$1,380,000.00;
3. Return of the legal fee paid to Righteous Law;
4. Legal cost to [AB] Legal Limited in resolving this matter, including this complaint.

### **Ms PS's response**

[25] Ms PS submits that the Agreement for sale and purchase required Righteous Law to settle the transaction, notwithstanding the issues with registration. She submits that legal title was transferred to Ms QT on settlement and notes that Ms QT gained possession of the property following payment of the settlement monies to the vendor's solicitor.

[26] Ms PS also says that "there was no risk in completing the transfer as the legal ownership of the property was duly passed to Ms QT with the necessary registration of interests of the bank noted on the same date". She refers to the copy titles provided which record that Ms QT became the registered proprietor on 30 October 2020.

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<sup>12</sup> At [11].

<sup>13</sup> At [13].

<sup>14</sup> Complaint form, part 8.

[27] Ms PS asserts that “it is incorrect both in fact and in law to claim that Ms QT settled the property without the title being transferred to her until three months after settlement”. She says that this “was explained to Ms QT via telephone by Ms XT from our property team prior to settlement”.

[28] Ms PS considers that the fact that the firm also acted for [Bank A] is irrelevant as the complaint was lodged by Ms QT. Nevertheless, she asserts that the certificate provided to [Bank A] was complied with.

[29] With regard to the prior dealing Ms PS says:

... there was a prior dealing lodged ahead of the transfer and mortgage; the dealing was for an extinguishment of easement the [sic] Land Transfer Act 2017 which usually relates to a redundant easement being removed from the title.

[30] Ms PS says that legal title was transferred to Ms QT on the day of settlement.

### **The Standards Committee determination**

[31] The determination by the Committee is brief. The discussion and summary is set out in paragraph [3] which is included here in full:<sup>15</sup>

In reviewing the material provided by both parties, the Committee considers that there were communications issues between the practitioner and the complainant, and a lack of clarity around process. The purchaser was seemingly not made aware of the steps.

LINZ was unable to issue title immediately because of a historical easement which delayed registration of the complainant’s dealing; however LINZ accepted the transfer and mortgage for registration on the settlement date, 30 October 2020.

Notwithstanding the delay in issue of title to the property purchased by Ms QT, there was no effect on ownership and no effect on the transfer and mortgage. There was no loss caused to Ms QT and settlement occurred on the due date without difficulty; she had good title to the property and the mortgage was correctly registered on the day of settlement.

While the Committee agrees that Ms QT should have been informed sooner, there was no breach of duty by the practitioner, and the lapse in communication does not reach the standard for a finding of unsatisfactory conduct.

### **Ms QT’s application for review**

[32] Ms QT has applied for a review of the Committee’s determination to take no further action on her complaints. Mr JV has provided reasons in support of the application. He says:<sup>16</sup>

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<sup>15</sup> Standards Committee determination (2 June 2021) at [3].

<sup>16</sup> JV supporting reasons for review (15 July 2021) at [2].

[Area] Standards Committee considered the complaint and was of the view that Mr KG of Righteous Law did not breach his duty as a practitioner, that the lapse in communication does not reach the standard for a finding of unsatisfactory conduct.

[33] The lapse in communication Mr JV refers to is the lack of any communication with Ms QT about the prior dealing and the fact that there would be a delay in registration of the transfer to her.

[34] Mr JV also provided an expert's opinion from Ms NC.

### **Righteous Law's response**

[35] [CD Law] (Ms RK and Ms CU) has provided comprehensive submissions in support of their view that the Committee's determination to take no further action is correct. They provide an expert's opinion from Mr BF in support of the respondent.

### **Nature and scope of review**

[36] The High Court has described a review by this Office in the following way:<sup>17</sup>

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

This review has been conducted in accordance with those comments.

### **Process**

[37] This review progressed by way of a hearing on 2 June 2022 attended by Ms QT and her support person, Ms QT's counsel (Ms AW), Ms PS, director of Righteous Law Limited, and Ms PS's counsel, (Ms RK and Ms CU).

[38] During the course of the hearing Ms PS advised that she would check the firm's records and forward any documentation that was not on the file sent to [AB] Legal. On 17 June, by which time this decision had been drafted, Ms RK forwarded copies of a Letter of Engagement signed by Ms QT (but not signed by Mr KG), a copy of the firm's invoice (which was on the file) and a copy of a title search carried out by the real estate agent.

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<sup>17</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[39] Ms RK also made supplementary submissions. Further submissions were not requested and there has been ample opportunity for submissions to be provided prior to the hearing. I do not seek submissions on penalty.

[40] Both Mr BF and Ms NC also attended. I extend my thanks to both of them for assisting with the conduct of this review.

[41] It is appropriate at this stage to summarise the opinions of Mr BF and Ms NC. However, it is important to make clear at this point that I do not intend to reach any view as to whether or not Ms QT was obliged to settle. The answer to this issue involves an interpretation of the terms of the Agreement for sale and purchase, and matters of fact and law, all of which can only be addressed in proceedings before the courts.

#### Ms NC's opinion

[42] Ms NC has over 25 years of experience in property and commercial law. She regularly presents at seminars and conferences on matters including residential property transactions, conveyancing, cross leases, unit titles, leasing, the Property Law Act 2007 and the Residential Tenancies Act 1986.

[43] Set out below are extracts from Ms NC's opinion.

#### *Landonline*

20. ... The system incorporates automated checks... This includes a notification if there is a prior pending transaction against the title and allows the e-dealing to be withdrawn or queue for processing in priority order<sup>2</sup>.

<sup>2</sup> Land Law Thomson Reuters paragraph L04.08

21. ... It is also good practice to pre-validate e-dealings before settlement, and this is referred to in the Property Law Section Guidelines at 4.89 "You must pre-validate and certify and sign all instruments" and is also recommended by Land Information New Zealand in their guidelines...

A warning would show for the e-dealing if there is a pending dealing. ...the pre-validation process is a pre-cursor to see if there are any issues to prevent registration.

22. ... If there is a pending dealing it will not register until the pending dealing registers. ...

23. It is important to understand what type of dealing the prior dealing comprises, and what stage of processing it is at, to assess the risk to the purchaser and the mortgagee in terms of potential problems and delays. ...this dealing showed an estimated time for completion of 4 months after lodgement to allow for Land Information New Zealand to issue notices and to give time for responses. This period could be extended if there are issues with issuing notices, or if owners raised objections, or if the registration was requisitioned.



24. ... It is usually best practice to seek undertakings from the lodger of the pending e-dealing to ensure the protection of the party subject to the later e-dealing.

...

26. Section 24 of the Land Transfer Act 2017 states:

“(1) An instrument has no effect to create, transfer or otherwise affect an estate or interest in land under the provisions of this Act until the instrument is registered.”

...

28. In that period prior to registration and indefeasibility it is possible for a purchaser for value to be dragged into a battle of equitable priorities by another equity-holder claiming an interest in land...

29. Potter J held in *Mercury Geotherm Ltd (in rec) v McLachlan*<sup>6</sup> that a purchaser of land cannot claim the protection of indefeasibility until registration...

<sup>6</sup> [2006] NZLR 258 at 138

...

31. A purchaser should always obtain a guaranteed search of title prior to settlement (see NZLS PLS Guidelines at 4.88), ...

*[Banks A's] requirements as Mortgagee*

...

34. The [Bank A] solicitors certificate required the Respondent to certify that:

2. We have made such enquiries and searches as are appropriate as at the date of this certificate (including obtaining a guaranteed search of the property described in Schedule 1 (Property) within sufficient time of settlement...

3. We confirm that ... we are not aware of anything which would prevent [Bank A] NZ's mortgage in relation to the Property being registered and obtaining the priority required by the Banks.

...

10.2(b) We have prevalidated the dealing with LINZ.

...

*Sale and Purchase Agreement*

36. The pending dealing was not a requisitionable matter of title, but rather a matter of conveyance which can be raised at any time and outside of the requisition period. ...the ability to put the purchaser in the position to be able to register the transfer was the obligation of the vendor. “The obligations of the vendor (the assurance of the property, that is making available to the purchaser the means to obtain registration and thus title) and the purchaser (the payment of the balance of the purchase price) on settlement are usually interdependent and contemporaneous.<sup>9</sup>” The

purchaser having to wait at least 3 months for a prior dealing to register first before their transfer may register is insufficient to meet this obligation.

<sup>9</sup> Sale of Land *McMorland* at 11.02 – *Palmer v Lark* [1945] Ch 182 at 184-185 per Vaisey J, *Shetland Farms Ltd v Plateau Farms Ltd* (2009) 10 NZCPR 597 at 40-43 per Associate Judge DGJ Gendall

37. If the purchaser's solicitor had raised the issue of the title not being immediately transferrable, there were various options open to the parties under the Agreement, with penalty interest payable by the vendor if possession wasn't provided, or an Agreement could have been made to defer settlement.

### Mr BF's opinion

[44] Mr BF's qualifications and experience is undisputed. In the judgment referred to by Mr BF<sup>18</sup> the Hon. Justice [XX] said of Mr BF:<sup>19</sup>

Mr BF is a highly experienced senior conveyancer who has played a national role in educating the legal profession about conveyancing transactions and e-dealing.

[45] His Honour preferred Mr BF's evidence over that provided by the defendant's expert. He said:<sup>20</sup>

Mr BF has a very impressive background in conveyancing matters and greater experience than Mr "[V]".

[46] Mr BF was asked by the respondent's counsel to address five questions:<sup>21</sup>

Question 1(a) – The operation of clause 3 of the Agreement for sale and purchase: whether the purchaser was obliged to complete settlement (as defined by the Agreement for sale and purchase) notwithstanding the pending dealing

Question 1(b) – The operation of clause 3 of the ASP: whether the vendor was obliged to and/or was in a position to complete settlement (as defined by the ASP) notwithstanding the pending e-dealing

Question 1(c) – The operation of clause 3 ASP: whether the penalty provisions of clause 3.13 were otherwise available to the purchaser in the circumstances

Question 2 – Whether there is any certainty that if an undertaking had been obtained from the vendor's solicitor, a shorter delay to the registration of the transfer would have occurred?

Question 3 – Whether Righteous Law Limited's conduct in completing settlement without obtaining an undertaking or a guaranteed search prior to settlement amounts to a failure to act competently consistent with the duty of care?

<sup>18</sup> *Beech Cove Properties Ltd v Repts Ltd* (2010) 11 NZCPR 601 (HC).

<sup>19</sup> At [45].

<sup>20</sup> At [64].

<sup>21</sup> BF's opinion (9 September 2021).

[47] Without in any way diminishing the value of Mr BF's opinion, the questions asked of him address, in the main, the legal issues, as distinct from the professional obligations of Righteous Law Ltd.

*The operation of clause 3 of the Agreement*

[48] Mr BF steps through the requirements of cl 3 of the Agreement and concludes:

22 My answer to this question is that the purchaser was obliged to complete settlement notwithstanding the pending dealing. I say this because looking at the ASP clauses relating to settlement, all of the obligations on both the purchaser through their lawyer and the vendor through their lawyer had been complied with.

*Was the vendor obliged to and/or was in a position to complete settlement?*

[49] Mr BF says:

31 ... I am satisfied that the vendor was able to complete settlement and insist that the purchaser complete settlement accordingly because the vendor was able to provide the purchaser with every instrument and the transfer to enable the purchaser's transfer to register. ....

*Were the penalty provisions of clause 3.13 available to the purchaser?*

[50] In answer to this question, Mr BF says:

32 It flows from my answers to the preceding two questions that the purchaser had no right to withhold settlement. ...

*Would an undertaking from the vendor's solicitor have reduced the time before the documents were registered?*

[51] Mr BF's view is:

41 ... there is no certainty that an undertaking "from the vendor's solicitor" would have necessarily sped up the prior transaction. All it would have done is provide the purchaser's lawyer with the comfort that the vendor's lawyer was obliged by the undertaking to ensure that any rejection or requisition was rectified and relodged. ...

*Did Righteous Law Limited's conduct amount to a failure to act competently consistent with the duty of care?*

[52] Although he does not answer this question directly, Mr BF's summary of the service provided by Righteous Law Ltd is that the firm has acted competently.

## Review

[53] Section 12 of the Lawyers and Conveyancers Act 2006 defines unsatisfactory conduct as:

(a) conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; or

...

(c) conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm, or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7);

...

[54] Rule<sup>22</sup> 3 provides:

In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

[55] Rule 6 provides:

In acting for a client, a lawyer must, within the bounds of the law and these rules, protect and promote the interests of the client to the exclusion of the interests of third parties.

[56] Rule 7 provides:

A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client.

[57] Rule 7.1 provides:

A lawyer must take reasonable steps to ensure that a client understands the nature of the retainer and must keep the client informed about progress on the retainer. A lawyer must also consult the client (not being another lawyer acting in a professional capacity) about the steps to be taken to implement the client's instructions.

[58] Rule 11.3 provides:

A lawyer in practice on his or her own account must ensure that the conduct of the practice (including separate places of business) and the conduct of employees is at all times competently supervised and managed by a lawyer who is qualified to practise on his or her own account.

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<sup>22</sup> The Rules referred to in this decision are the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, in force at the time the events occurred.

[59] In the letter of complaint on behalf of Ms QT, Mr JV did not specifically identify provisions of the Lawyers and Conveyancers Act 2006, or of the Conduct and Client Care Rules,<sup>23</sup> where he and his client consider the firm has fallen short. However, all of the matters discussed below derive from the content of Mr JV's letter.

## **Discussion**

[60] Mr JV provided a copy of Righteous Law's file, with the complaint to the Complaints Service. The full Standards Committee file, including the Righteous Law file, has been provided to me.

[61] What is immediately apparent from the file is that there has been no written correspondence from the firm to Ms QT. There are no file notes of telephone calls, in or out, with anybody. This immediately leads to the conclusion that the advice and information on all matters relating to the purchase and advance from provided to Ms QT was minimal, to the extent of being non-existent.<sup>24</sup>

[62] The Agreement for sale and purchase was signed by Ms QT on 28 September 2020 and sent to Ms PS on the same day. The Agreement was assigned to Mr KG and his team.

[63] None of the searches on the file provided to me, are dated before settlement. At the review hearing, Ms PS advised that she was sure there would have been an initial search carried out. She indicated that she could not provide a copy of any such search because she no longer had her file. However, she advised that she would check the firm's records following the hearing and forward a copy of any search carried out at that time.

[64] Ms RK has provided a copy of a title search dated 17 August 2020 (over one month prior to the date of the Agreement) carried out by the real estate agent. Righteous Law did not obtain a search for itself, and did not follow its 'usual approach' as advised by Ms RK.<sup>25</sup>

[65] There is no letter to Ms QT outlining the terms of the Agreement or reporting on documents registered against the title.

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<sup>23</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

<sup>24</sup> The narration in the firm's invoice as to the work undertaken is not supported by the evidence.

<sup>25</sup> RK submissions 17 June 2022.

[66] There are two land covenants registered against the title to the property. There are no copies of these on the file and no correspondence with Ms QT advising of the terms of same. Similarly, there is no copy of the easement appurtenant to the property.

[67] As a result, no advice was provided to Ms QT about the nature of these documents. Any rights of requisition as provided in cl 6.2 of the Agreement, were lost.

[68] It was assumed by Righteous Law that the reason for lodging documentation to extinguish the easement is that it was redundant. The easement was appurtenant to the property purchased by Ms QT and had presumably been brought down from the head title of the land being subdivided. As no copy of the easement was obtained, the nature of the right was not established, and Ms QT advised. The easement may not have been redundant, as assumed.<sup>26</sup>

[69] Even when Righteous Law became aware that the easement was to be extinguished, there was no investigation as to what stage the documentation had reached and how long it was going to take before the transfer to Ms QT could be registered. Ms NC says that the dealing showed an estimated time of four months, but this time could have been extended.

[70] That is the issue at the heart of Ms QT's complaint. She was not aware of the fact that registration had not been completed until she talked to her neighbour some three months after settlement. The opinions provided by Mr BF and Ms NC include a discussion as to whether or not Ms QT was obliged to settle, and an explanation of the consequences of queuing the transfer and the mortgage to [Bank A]. This information could only have been communicated to Ms QT in writing as the matters are complex.<sup>27</sup> There is nothing on the file providing this information.

[71] Righteous Law proceeded to pay over Ms QT's funds and the advance from the bank on 30 October 2020 without instructions from Ms QT or the bank, for whom Righteous Law also acted.

[72] Ms NC says that Righteous Law should have obtained an undertaking from the vendor's solicitors to do whatever could be done to ensure that the prior dealing was dealt with expeditiously. Mr BF says that even if such an undertaking had been sought and obtained, the registration would not have been completed any sooner.

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<sup>26</sup> Ms RK submits that there is no evidence the easements were of any significance to Ms QT. That does not excuse the failure to investigate the terms of the easement.

<sup>27</sup> It became apparent during the course of the review hearing that Ms QT has a limited understanding of [language]. It was the obligation of Righteous Law Limited to ensure that Ms QT was fully informed in language which she could understand.

[73] That is a view which can only be formed with hindsight. If registration of the prior dealing had been delayed for reasons as identified by Ms NC,<sup>28</sup> Righteous Law had not protected Ms QT or provided her with any recourse. This amounts to a breach of the general principle encapsulated in the Conduct and Client Care Rules, to protect and promote the interests of a client.<sup>29</sup>

[74] Righteous Law and its counsel make much of the fact that when the transfer was registered, the date of registration was recorded as having taken place on the date of lodgement (30 October 2020) as provided by s 35 of the Land Transfer Act 2017. However, this review, and Ms QT's complaint, must focus on the conduct of Righteous Law at the time and not with the benefit of hindsight.

[75] It is perhaps fortunate for Ms QT that registration of the prior transaction proceeded. However, Righteous Law did not follow up at any stage after settlement to ensure registration was on track. It was incumbent on them to do so and to eventually provide Ms QT and [Bank A] with a copy of the title showing completion of the registration. In the interim period, Ms QT had only an equitable interest in the property and the bank's security was incomplete.<sup>30</sup>

[76] It was not until Ms QT made enquiries of Righteous Law in December 2020 as to whether title had issued in her name, that Righteous Law took any action to follow up. Mr KG advised Ms QT at that stage that the delay was because it was close to the end of the year and that LINZ had been busy and the processing was slow.

[77] That was not true.

#### *Righteous Law's duties to [Bank A]*

[78] Righteous Law was instructed by to document the loan to Ms QT. Ms PS says that this is "irrelevant as the complaint is lodged on behalf of Ms QT and not [Bank A]".<sup>31</sup>

[79] Section 132(1) of the Lawyers and Conveyancers Act 2006 provides that any person may complain about the conduct of a practitioner. The complaint is not 'irrelevant.'

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<sup>28</sup> At [50] of her opinion.

<sup>29</sup> Preface to Conduct and Client Care Rules.

<sup>30</sup> See Ms NC's opinion at [27].

<sup>31</sup> PS - letter to Lawyers Complaints Service (19 March 2021) p 2.

[80] Righteous Law paid over the [Bank A] advance to the vendor's solicitor, without explaining to the bank the expected delay in registration, and obtaining specific instructions to do so.

[81] Righteous Law Limited certified:

- (i) We confirm that ... we are not aware of anything which would prevent [Bank A] NZ's mortgage in relation to the Property being registered and obtaining the priority required by the Bank.
- (ii) We have made such enquiries and searches as are appropriate as at the date of this certificate (including obtaining a guaranteed search of the property...);<sup>32</sup>
- (iii) We will forward a post registration search copy of each record of title;<sup>33</sup>
- (iv) We have prevalidated the dealing with LINZ.

Righteous Law's certificate wrongly certified that it had carried out these tasks. I note that the certificate was signed by Mr LD, another director of the firm. A certificate is akin to an undertaking. Rule 10.3 provides that a lawyer must honour all undertakings. The incorrect certificate was likely to mislead [Bank A] that all its requirements had been met. This constitutes a breach of r 11.1 of the Conduct and Client Care Rules.

[82] In general terms, Righteous Law Ltd did not protect and promote the interests of [Bank A]. This is a breach of r 6.

### **Conclusion and decision**

[83] Having reviewed all of the material provided in conjunction with this review, I conclude that Ms QT has been poorly served by Righteous Law Ltd. The firm has not fulfilled the minimum requirements for a lawyer acting for Ms QT in this transaction.<sup>34</sup>

[84] I have given careful consideration as to whether or not the conduct of Righteous Law Ltd should be referred to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. Of particular concern, is the untrue certificate provided to [Bank A], and the untruth to Ms QT when she enquired whether title had been transferred to her.<sup>35</sup>

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<sup>32</sup> Ms RK has argued that the failure to obtain a guaranteed search was not part of Ms QT's complaint. That is not correct. The failure to obtain a guaranteed search arises in the context of the certificate to [Bank A] that a guaranteed search had been obtained.

<sup>33</sup> Righteous Law no longer acted for Ms QT by the time registration was completed, but continued to act for the bank.

<sup>34</sup> Ms RK argues that the outcome of the firm's conduct was acceptable. It is not acceptable for a lawyer acting for the purchaser of a property to pay over the balance to settle without ensuring that title will pass to the purchaser immediately.

<sup>35</sup> The untruth being that LINZ processing was slow because of the proximity to the Christmas break.



[85] I have chosen not to do so, but the Orders made below, reflect the concern with which I view the firm's conduct.

[86] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee is reversed.

[87] The service and advice provided by Righteous Law Limited amounts to unsatisfactory conduct pursuant to s 12(a) and (c) of the Lawyers and Conveyancers Act 2006. The finding pursuant to s 12(c) is by virtue of the breaches of rr 3, 6, 7, 7.1 and 11.3 of the Conduct and Client Care Rules.

### **Orders**

[88] This Office may exercise any of the powers that could have been exercised by the Standards Committee.<sup>36</sup> That includes all of the orders that a Standards Committee may make pursuant to s 156(1) of the Lawyers and Conveyancers Act 2006.

[89] Pursuant to the provisions of the Act, the following orders are made:

- (a) Righteous Law Limited is censured. A censure amounts to an indication that a law firm must adhere to the standards of conduct required of it and is to be taken seriously. It is not a nominal penalty to be imposed.
- (b) In both the complaint and in this review, Ms QT seeks an apology from Righteous Law Limited. The firm is ordered to apologise to Ms QT. The apology is to be a general apology for the shortcomings of the firm identified in this decision. The form of apology is to be provided in the first instance, to [AB] Legal Ltd for approval. Following approval, the apology is to be signed by Ms PS on behalf of Righteous Law Limited and sent to [AB] Legal, to then be forwarded to Ms QT<sup>37</sup> The costs involved in these attendances are to be met by Righteous Law Limited. This order for payment of costs is made pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006.
- (c) Righteous Law Limited is to cancel the fee (exclusive of disbursements) charged to Ms QT for this transaction, together with the fees charged in connection with the [Bank A] loan documentation. The amount of the fee is to be refunded to Ms QT. Payment is to be made by direct credit into

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<sup>36</sup> Section 211(1)(b) Lawyers and Conveyancers Act 2006.

<sup>37</sup> Any member of [CD Law] may carry out the tasks allocated here to Ms RK if she is unable to do so herself.

an account specified by Ms QT<sup>38</sup> within two working days of the account number being advised to Righteous Law Limited.

- (d) Righteous Law Limited is to pay the sum of \$10,000 to the New Zealand Law Society by way of a fine. This fine represents two-thirds of the maximum fine that may be imposed.<sup>39</sup> The fine is fixed at that level, both in respect of the unsatisfactory conduct that has occurred in this instance and to remind the directors of Righteous Law Limited of the need to ensure that its staff are more closely supervised<sup>40</sup> in the future.<sup>41</sup>
- (e) There will be an order that Righteous Law Limited is to pay a sum to Ms QT on account of costs incurred by her with [AB] Legal Limited in pursuing her complaint and this review. [AB] Legal Limited is to submit to this Office, copies of the accounts rendered by it to Ms QT for attendances relating to the complaint and this review, together with supporting time sheets. The quantum of the order will then be determined and communicated to the parties.

### **Costs**

[90] Pursuant to s 210 of the Lawyers and Conveyancers Act 2006 and the Costs Orders Guidelines issued by this Office, Righteous Law Limited is ordered to pay the sum of \$1,600 to the New Zealand Law Society on account of the costs of this review.

### **Penalty interest<sup>42</sup>**

[91] In both the complaint and in this review, Ms QT has sought payment of the penalty interest that the vendor may have been required to pay for failing to settle in accordance with the terms of the Agreement. Any such order can only follow a finding that Ms QT was not obliged to settle on 30 October 2020 and was not provided with the opportunity to decline possession and require the vendor to pay penalty interest. I have declined to make any decision on this issue and consequently there can be no orders as requested by Ms QT.

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<sup>38</sup> Ms QT may nominate the account number direct to Ms PS or through [AB] Legal as she wishes.

<sup>39</sup> Section 156(1)(i) of the Lawyers and Conveyancers Act 2006.

<sup>40</sup> Rule 11.3 of the Conduct and Client Care Rules 2008.

<sup>41</sup> This fine is not imposed for misleading the Standards Committee.

<sup>42</sup> The claim for penalty interest could only be made by way of compensation pursuant to s 156(1)(d) and is limited to \$25,000 by reg 32 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committee) Regulations 2006.

## **Publication**

[92] Section 206(4) of the Lawyers and Conveyancers Act provides that this Office may direct such publication as is necessary or desirable in the public interest. I consider that it is in the public interest to have the possibility of being made aware of the firm's shortcomings in the service provided to Ms QT.

[93] This decision will be published in full on the website of this Office, anonymising the names of Ms QT, all counsel involved with this review, Mr BF and Ms NC, Mr LD, Mr KG and Ms XT.

[94] Copies of this decision may be provided to Mr BF and Ms NC.

### *Enforcement of orders*

[95] Pursuant to s 215 of the Act, I confirm that the payments ordered to be made by Righteous Law Ltd may be enforced in the Manukau District Court.

**DATED** this 21<sup>st</sup> day of JUNE 2022

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**O Vaughan**  
**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:

Ms QT as the Applicant  
Ms PS as the Respondent  
Mr JV and Ms AW as counsel for the Applicant  
Ms RK and Ms CU as counsel for the Respondent  
[Area] Standards Committee  
New Zealand Law Society