

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee

BETWEEN

RF

Applicant

AND

QC

Respondent

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

DECISION

Introduction

[1] Mr RF has applied for a review of a decision by the [Area] Standards Committee, which decided to take no further action in respect of his complaint concerning the conduct of Mr RF's lawyer Mr QC, who has been representing him in relation to his firearms and firearms licence.

Background

[2] Mr RF wants this Office to direct Mr QC to carry out his instructions.

[3] Mr QC is willing to carry out Mr RF's instructions if he receives security for his fees.

[4] The Committee summarises Mr RF's complaint in the following way:

Mr RF complains about Mr QC's failure to follow instructions and specifically has not:

- (i) made representations to Police regarding the destruction of his pistols;

- (ii) made representations to the [Area] Pistol Club regarding conditions of membership imposed on him; and
- (iii) pursued legal action against [Area] Pistol Club.

[5] Mr RF had been a member of the [Area] Pistol Club since 1981. Police revoked Mr RF's firearms licence in 2012, and he handed over his pistols. Police reinstated his licence in 2015 without the pistol endorsement. The [Area] Pistol Club was willing to reinstate Mr RF as a member, but required Mr RF to take a safety test so he could reacquire the pistol endorsement.

[6] Mr RF did not take the test, did not reacquire his pistol endorsement and did not recover his pistols from police. Police indicated the pistols would be destroyed in October 2016 without compensation being paid to Mr RF.

[7] Mr RF wants his pistol endorsement back, to be reinstated to the [Area] Pistol Club and to get his pistols back.

[8] Mr QC provided legal services to Mr RF, but stopped short of filing proceedings against the [Area] Pistol Club, addressing the test requirement with the [Area] Pistol Club and attempting to avert police destroying Mr RF's pistols until Mr RF gave him \$3,000 as security for his fees.

[9] Mr RF is unwilling to pay the \$3,000 Mr QC has requested.

[10] Mr RF wanted the Committee, and now wants this Office, to break the deadlock by directing Mr QC to do the work. He says he will pay, but not in advance.

Review Hearing

[11] The parties attended a review hearing by telephone on 23 August 2017. Mr RF's connection was terminated unexpectedly so he was offered, and took, the opportunity to file further submissions. Those were provided to Mr QC who did not respond.

Nature and scope of review

[12] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[13] More recently, the High Court has described a review by this Office in the following way:²

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.

Discussion

[14] Mr RF has not achieved the outcomes he seeks, despite Mr QC’s best endeavours. He has not got his pistol endorsement back, he has not been reinstated to the [Area] Pistol Club and he has not got his pistols back.

[15] Mr QC is not prepared to act further without Mr RF having paid in advance to secure his fees. Mr QC is not obliged to act without being paid. It is open to him to request security for his fees, as he has done. If that condition is not satisfied, he is not obliged to act.

[16] As the Committee said, Mr QC’s requirement for payment before he carries out Mr RF’s instructions does not raise a professional standards issue. In the circumstances there can be no determination that there has been unsatisfactory conduct on his part. In the absence of a determination that there has been unsatisfactory conduct on Mr QC’s part, the Committee and this Office lack the statutory authority to order Mr QC to do anything, and have no statutory power to order Mr QC to act in any event.

[17] Mr QC has made the conditions on which he will act clear to Mr RF. If Mr RF does not wish to accept those terms he is free to seek legal assistance elsewhere, and to attempt to negotiate terms that are more satisfactory to him.

² *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[18] There is no reason to take any further action. The Committee's decision that further action is not necessary or appropriate is confirmed.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

DATED this 22nd day of September 2017

D Thresher
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 RF as the Applicant
Mr QC as the Respondent
Mr N as the Related Person
[Area] Standards Committee
The New Zealand Law Society