

LCRO 106/2016

CONCERNING

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

AND

CONCERNING

a determination of the [City] Standards Committee [X]

BETWEEN

CA

Applicant

AND

BF

Respondent

DECISION

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

Introduction

[1] Mr CA has applied for a review of a decision by the [City] Standards Committee [X] which decided to take no further action in respect of his complaint concerning the conduct of, and fees charged by, Mr BF.

Background

[2] Mr CA instructed Mr BF to act for him in relation to an employment dispute between 24 July¹ and 22 October 2015. For attendances until 12 October 2015 Mr BF charged a total fee of \$7,500,² excluding GST and disbursements. Mr CA contends Mr BF gave him a firm quote of \$5,000 to \$5,500 for all the work he would do, but no

¹ Letter of engagement, Mr BF to Mr CA (24 July 2015).

² The time recorded on Mr BF's timesheets is almost double that, but there is no evidence of him having billed anything more than fees of \$7,500.

mention of any quote is made in Mr BF's letter of engagement, which sets out the terms on which he agreed to accept Mr CA's instructions.

[3] Mr BF provided Mr CA with copies of various emails, and followed up an authority to uplift the files from his former lawyer on or about 11 August 2015.³ Mr CA's grievance had already been filed in the Employment Relations Authority (ERA) before Mr BF was instructed. Statements of problem had been prepared and filed, the employer's evidence had been filed, and a timetable set for filing Mr CA's evidence.

[4] Mr CA is critical of the process by which Mr BF drafted and amended his evidence. Mr CA complains that Mr BF required him to pay money into a lawyer's trust account before he would act, causing him panic and stress because there was little time before the next appearance. Mr CA says he paid on 20 August 2015, and Mr BF produced an invoice which he implies was more than it should have been, and quicker than was decent. The invoice is dated 2 September and contains a fee of \$1,500.

[5] Mr CA contends that Mr BF was incompetent in his representation, and says he terminated the retainer improperly, and advised the ERA and employer accordingly, before he told Mr CA. Mr CA believes Mr BF's conduct resulted in adjournments, and jeopardised his claims. He believes he has been disadvantaged by Mr BF's conduct.

[6] Mr CA says he is reluctant to pay Mr BF any more money until he understands the damage that Mr BF has done to his case. He believes Mr BF was focused more on the money than on doing the work. Mr BF required payment before he was prepared to devote much more time to Mr CA's matter.

[7] Mr BF explained his fees to Mr CA by email on 29 September, and invited him to pay. Mr CA declined. Mr CA expressed the view that Mr BF's contribution was "absolutely worthless",⁴ and says Mr BF failed to act competently, in a timely informed manner, and breached his duty of care.

[8] Mr CA made a complaint to the New Zealand Law Society Complaints Service accordingly.

³ Email from Mr BF to Ms GE (11 August 2015).

⁴ Email from Mr CA to Mr BF (19 October 2015).

Complaint process and Standards Committee decision

[9] Mr BF responded to Mr CA's complaint on 7 and 10 December 2015, explaining that he had taken a claim against Mr CA for just over \$7,000.

[10] Mr BF denies that he acted negligently or incompetently, or charged a fee that was not fair or reasonable. He says he advised Mr CA on the likely outcome of the preliminary hearing before the ERA, and his likely costs. He refers to the advice he provided, and relied on the ERA determination as evidence of his competence, and as justification for his fees. Mr BF provided his letter of engagement, correspondence with Mr CA, submissions and affidavit for the ERA, his invoices and his time records.

[11] Mr BF confirms he did not charge Mr CA solely on the basis of the time devoted to his matter. His view was that the proceedings were rather complex, and reasonably urgent. He says the preliminary application was not straightforward, and Mr CA did not assist in reducing the amount of time it took to finalise his affidavit. He did not consider that Mr CA was under any undue pressure beyond that usually associated with litigation.

[12] Mr BF contends his work was validated by the ERA determination, which aligned with the advice he had provided in advance. He says his services and advice were provided in a timely manner, and his fees were reasonable and fair. He refers to various factors that he took into account including the time and labour expended, skill, specialised knowledge and responsibility required to perform the services, importance of the matter to Mr CA, urgency, degree of risk, complexity, his own experience reputation and ability, the estimate he provided, the arrangement overseas, the cost in running his practice, the market range of fees, the absence of a fixed fee agreement, and the fact that he was not able to attend other work because he was acting for Mr CA.

[13] Mr CA disagreed with the majority of Mr BF's reply.

[14] The Standards Committee delivered its decision on 22 March 2010. Having considered the two issues raised by Mr CA in his complaint, competence and fees, the Committee determined, pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act), that no further action on the complaint was necessary or appropriate.

[15] In reaching that decision the Committee determined that:

- (a) The materials did not support a finding that Mr BF lacked competence;

- (b) His work was of a high standard;
- (c) He did not breach any of his duties to Mr BF;
- (d) His fees of \$7,500 were broadly in accordance with his estimates, did not reflect the time and attendance recorded, but heavily discounted that;
- (e) The fees were relatively modest and represented good value to Mr CA, particularly when regard is had to the outcome of the preliminary proceedings;
- (f) The fees were fair and reasonable.

[16] Mr CA disagreed with the Committee's decision and applied for a review.

Review application

[17] Mr CA's application for review proceeds on the basis that the Committee did not view events as he did, the decision is incorrect, and the outcome cannot stand because, as he said in his complaint, Mr BF "is an incompetent, manic, manipulative greedy psychopath".⁵ He says Mr BF duplicated effort, then charged him for having done so, and remains critical of the process by which his evidence was drafted and finalised.

[18] Mr BF's response is dated 25 May 2016. He says Mr CA's application was lodged out of time, because the decision was issued on 22 March 2016, and emailed to Mr CA on 24 March at his email address, and the deadline for filing an application for review expired on 10 May 2016, the day before Mr CA lodged his application, on 11 May 2016.

[19] If this Office accepted jurisdiction, Mr BF consented to the matter being determined on the papers, on the basis that Mr CA had not raised any relevant issues of substance that the Committee did not consider. He relies on the information he had filed with the Committee. He refers to a claim he has made to the Disputes Tribunal, which is stayed pursuant to s 161 of the Act. He says he has offered to settle proceeding, but his offer was not accepted. He says he simply wants to be paid for the services he had provided, in accordance with the agreement, and was not, as Mr CA contends, desperate to be paid.

⁵ Application for review (2 May 2016).

Review hearing

[20] Mr CA attended a review hearing in Auckland on 11 May 2017. Mr BF did not attend, and the hearing proceeded in his absence with his consent.

Nature and scope of review

[21] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:⁶

... 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.

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.

[22] More recently, the High Court has described a review by this Office in the following way:⁷

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.

[23] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee’s determination, has been to:

(a) Consider all of the available material afresh, including the Committee’s decision; and

(b) Provide an independent opinion based on those materials.

⁶ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

⁷ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Jurisdiction

[24] The parties were advised by letter dated 17 May 2016 that this Office had accepted jurisdiction over the review.

Analysis

[25] Mr CA's primary contention in support of his assertion that he was overcharged is that Mr BF gave him a firm quote for \$5,000 or \$5,500. He says his correspondence at the time affirms that view. Mr CA supports his fee complaint with the contentions that Mr BF was incompetent, and double charged him.

[26] There is no evidence to support either of those contentions.

[27] The materials that are available on review are broadly the same as those that were before the Committee. I have read the ERA's determination, and the materials prepared by Mr BF on behalf of Mr CA. There is nothing in that material that raises disciplinary concern on any basis, in particular there is nothing to suggest that Mr BF lacks competence.

[28] Mr CA did not produce any evidence that could result in a different conclusion to that reached by the Committee on the question of competence, or the standard of service Mr BF provided. There is no evidence that Mr BF's advice was deficient in any way, or that the services he provided fell below a proper standard.

[29] Similarly, there is no evidence to support the conclusion that Mr BF agreed to act for a fixed fee, or gave a firm quote. Nor is there any evidence to support the contention that his fees were not fair and reasonable. On the contrary, the timesheets record his attendances in some detail. They are entirely in alignment with the types of attendance one would expect in a file such as this. There is nothing unusual in them, or the fee. Rather, the fee is well within the range of what might properly be considered fair and reasonable. Mr CA has provided no evidence, and no cogent reason to form a different view to that reached by the Committee. The evidence that is available counters the concerns he raises.

[30] In all the circumstances, there are no grounds on which to depart from the Committee's decision, which 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 15th day of May 2017

D A 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 CA as the Applicant
Mr BF as the Respondent
[City] Standards Committee [X]
The New Zealand Law Society