

LCRO 111/2012

CONCERNING

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

AND

CONCERNING

a determination of the Auckland Standards Committee 1

BETWEEN

**MR AF on behalf of the
Department of Labour**

Applicant

AND

ZR

Respondent

DECISION

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

[1] In April 2012 Auckland Standards Committee 1 declined to take any action on complaints made by Mr AF on behalf of the Department of Labour. Mr AF sought a review of the Committee's decision, on grounds specifically confined to the Committee's finding that ZR was not an in-house lawyer. A copy of the review application was sent to ZR who responded through counsel.

[2] The fact that a review applicant seeks review of only one part of a Standards Committee decision does not prevent a more extensive review, and moreover it is the responsibility of the LCRO to review all aspects of the way that the Standards Committee has dealt with matters arising in relation to the complaint.

[3] This review has extended beyond the specific grounds sought for reasons that will be explained. The following discussion deals with all aspects arising from and in relation to the complaints.

Background

[4] This review relates to the conduct of ZR when assisted an immigration

consultancy business known as GV Services. It appears that her assistance was required because the principal of the business (Ms HT) did not have the requisite licence to act as an immigration adviser due to a (at that time) recent change in the law. To enable the business to continue, the assistance of ZR was sought to provide immigration advice. Because ZR was a lawyer she was exempt from the requirements of being licenced as an immigration adviser.

[5] It appears that the Department of Labour (which then administered the Immigration Advisers Authority which regulated immigration advisers) took an interest in this matter. Its main concern appears to have been that Ms HT continued to provide immigration advice even though [he/she] was not licenced.

[6] However a collateral concern (and the basis of this complaint) was that the scheme of regulation of immigration advisers was being avoided by the utilisation of ZR and her exempt status. In particular a number of immigration applications were made in which ZR's name was provided as the person who had assisted in making those applications (in particular applications in respect of a Mr IA and a Ms JB were identified in the complaint). It was alleged by Mr AF, on behalf of the Department of Labour, that the individuals concerned had been interviewed and stated that they had not dealt directly with ZR but only with other members of GV Services.

[7] ZR was identified on the website of GV Services as a person giving immigration advice and the email address provided was [redacted address].

[8] On this basis the matter was raised with the Law Society by a complaint [in 2011]. The Department identified concerns that the conduct of ZR may be in breach of:

- Rule 15.2.3 of the Rules of Conduct and Client Care for Lawyers (the Rules)¹ which prohibits an in house lawyer from providing services directly to the public;
- Rule 10 which requires a lawyer to maintain proper standards of professionalism; and
- Rule 11.1 which provides a lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

[9] The matter was referred to the Standards Committee and the complaint, phrased broadly in these terms, was put to ZR by a letter [in 2011] (noting in passing that the

¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

letter incorrectly referred to Rule 11.2). ZR responded through counsel. The main thrust of the response was that ZR did not consider herself to be employed by GV Services, but to be working as an independent contractor or advisor. It was stated that the arrangement was that ZR would attend at the offices of GV Services on approximately a weekly basis to meet with clients of GV Services. It was further stated that as matters progressed ZR “became busy with other commitments and did not continue giving the clients as much attention as [he/she] should have”.² It appears that it was at about this time that the Department of Labour / New Zealand Immigration Service commenced its enquiries. When this occurred ZR ceased her relationship with GV Services.

[10] It was stated for ZR that:

- [he/she] did not act as an “in-house lawyer” but rather held a practicing certificate to practice on her own account and was doing so when acting for clients of GV Services;
- in all of the circumstances there was no conduct that was misleading or deceptive; and
- that it may be that ZR did not see all of the clients that [he/she] forwarded applications in respect of, but that her signature may have been forged.

[11] No particular response appears to have been made in respect of the suggestion of breach of Rule 10 relating to proper standards of professionalism.

[12] The Standards Committee concluded that a hearing was needed and the parties were provided with a notice of hearing. In addition to the matters that had previously been highlighted, the notice of hearing indicated that the conduct complained of included that “ZR filed Immigration forms on behalf of clients [for] whom [he/she] was not instructed or engaged to act”.³

[13] ZR made submissions to the Committee through counsel which largely reiterated the points made on her behalf referred to above and submitted that the alleged breaches had not been proved. Reference was also made to certain personal circumstances of ZR, which had been referred to in earlier correspondence from counsel, and it was noted that ZR had not renewed [his/her] practicing certificate.

² Letter from Mr X to Lawyers Complaints Service [2011]).

³ Notice of Hearing of Complaint dated [2011].

[14] The Department of Labour did not provide any further submissions, relying on the material it had provided with the initial complaint.

[15] The Committee considered the matter at a hearing [in 2011], but considered that it needed further information to make a determination. It therefore sought from ZR further details regarding:⁴

- the number of clients seen by ZR;
- that ZR provide copies of the documentation provided by [him/her] to the Immigration Service on behalf of those clients;
- that ZR provide copies of any other documentation or instructions received in that matter; and
- any other relevant information that ZR consider relevant.

[16] That request was somewhat belatedly responded to by counsel and noted:

- ZR did not see all clients – [saw] approximately 20 in total;
- ZR no longer had access to the files that [had been] worked on; and
- no other information was held.

[17] The Committee considered this matter further at a meeting on [2012]. As was proper, the Committee confined its consideration to those matters set out in the notice of hearing. I consider each of the matters in turn.

Did ZR Breach Rule 15.2.3?

[18] The Committee concluded that there had been no breach of Rule 15.2.3.

[19] Rule 15.2.3 prohibits a lawyer from acting other than for a person who has engaged him or her to provide in-house legal services to (with limited exceptions) and provides:

Except to the extent expressly authorised by section 10 of the Act, an in-house lawyer may not provide regulated services to a client or member of the non-lawyer by whom he or she is engage.

[20] Rule 15.1 defines an in-house lawyer as “a lawyer who is engaged by a non-lawyer and who, in the course of his or her engagement, provides regulated services to

⁴ Letter from NZLS to Mr X ([2011]).

the non-lawyer on a full-time or part-time basis". That definition is not particularly helpful as it arguably captures all of the work of any lawyer (other than those retained by other lawyers such as barristers). However it needs to be read against the Rule as a whole and the ordinary meaning of in-house. Rule 15.1.1 further provides that "an in-house lawyer may be engaged under an employment agreement or a contract for services", which indicates an expectation that there will be a contractual relationship (by way of employment or otherwise) between the lawyer and the non-lawyer to whom the lawyer is expected to provide services. The term "in-house lawyer" also has a recognised meaning as a lawyer who is found within an organisation and provides legal services to that organisation.

[21] That prohibition found in Rule 15.2.3 is a further articulation of the statement in s 9 of the Lawyers and Conveyancers Act 2006 (the Act) that it is misconduct for a lawyer who is an employee to provide regulated services to the public other than as an employee of a law firm (incorporated or otherwise) or in some other limited circumstances.

[22] The purpose of that section is to ensure that lawyers who are providing services to the public are either properly qualified to do so on their own account, are properly supervised, or (in the case of the exceptions) there are other public policy reasons to allow advice to be given direct to the public. In the present case ZR was qualified to provide legal advice direct to the public. [He/She] held a practicing certificate which entitled [him/her] to practice on her own account in accordance with the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 and s 30 of the Act.

[23] On the information that was before the Committee it does not appear that ZR was an employed lawyer in terms of s 9 of the Act.

[24] While it perhaps ought to be recognised that the relationship between ZR and GV Services was less than clear, it does not appear that [he/she] was "in-house" in so far as [he/she] was not retained to be part of that organisation and to provide advice to that organisation. Rather an arrangement was entered into under which ZR, as a lawyer entitled to practice on [his/her] own account, was providing immigration advice to people who were also clients of GV Services.

[25] While there is a degree of discomfiture about this arrangement (such as the very obscure fee arrangements, and the danger that ZR lacked the necessary independence of a lawyer), it does not appear that [he/she] acted as an in-house

lawyer on these facts. Accordingly the Committee was correct to conclude that there had been no breach of Rule 15.2.3.

Did ZR Breach Rule 11.1?

[26] The Committee concluded that there had been no breach of Rule 11.1. which provides:

A lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

[27] It was alleged that ZR acted in a misleading manner, in particular by [his/her] email address which used ["GVS"] (GV Services) as part of that address, and her being referred to on the website of GV Services as follows, "[a]t the moment, we are currently working together with our lawyer ZR who will be the only person to give advice to you". It should be noted that those words on the website appear to be attributable to the owner of GV Services and not directly to ZR.

[28] In addition, ZR submitted forms to Immigration New Zealand for clients of GV Services.

[29] The issue for consideration is whether that conduct might be likely to mislead "any person" including clients of GV Services, Immigration New Zealand, or a member of the public.

[30] While it may be that the position of ZR was not made abundantly clear in those communications and the related conduct, the Committee concluded that in all of the circumstances it was not misleading. While this Office is empowered to conduct a review of the decision of a Standards Committee de novo, some weight in such matters of judgement are to be given to the committee (which comprised several individuals including at least one lay person) see the comments of Elias CJ in *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 especially at para 5.

[31] Had this matter not been considered by the Standards Committee previously I may have come to a different view, however in all of the circumstances I give some weight to the collective wisdom of the members of the Standards Committee and conclude that there is not sufficient basis to alter the finding of the Committee that the words and conduct of ZR in this case were not likely to mislead.

Did ZR file Immigration Forms on Behalf of Clients by Whom [he/she] Was Not Instructed or Engaged to Act?

[32] This is clearly the most serious allegation made against ZR. The suggestion appears to be that ZR would sign applications that had been filled out by GV Services without advising the clients themselves, or taking instructions from them.

[33] If this had occurred it would appear to be quite improper. Quite apart from the fact that ZR would be purporting to have advised people [he/she] had never met, [he/she] would also appear to be assisting in avoidance of the regulatory framework relating to immigration advisers.

[34] Further, in signing the form [he/she] certified that:

- the applicant asked me to help them complete this form and additional forms; and
- the application agreed that the information provided was correct before signing the declaration.

[35] [He/She] also stated by ticking a box that [he/she] had assisted the applicant by the provision of immigration advice.

[36] If [he/she] never met the clients then both of those certifications were false, as was the suggestion that [he/she] had provided immigration advice. If this indeed occurred it would go without saying that this would be a matter of serious concern. Most obviously Rule 2.5 which provides that:

A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.

[37] The Department of Labour provided two applications that appear to have been signed by ZR. The Department followed up with the applicants who both stated that they had never met ZR. When this information was put to ZR [he/she] did not clearly deny those facts. Rather [he/she] appeared (through counsel) to obfuscate somewhat. [He/She] accepted that [he/she] did not see all of the clients for whom applications were submitted.⁵ From this it may possibly be inferred that [he/she] did falsely make certifications as indicated above. However it was also noted that [he/she] was concerned that her signature may have been forged (thus suggesting that the signature was not [his/hers]).

[38] The essential issues were:

⁵ Submissions ZR to NZLS dated [2011] at [2.5].

- did ZR sign the immigration applications provided by the Department relating to Mr IA and Ms JB and
- if so, notwithstanding the denial of the clients, does [he/she] assert that [he/she] met the clients in those cases.

[39] If ZR did sign those immigration forms and [he/she] did not see those clients then it would appear that a significant question relating to [] conduct arises.

[40] In my view, given the seriousness of the allegation of false certification, the obfuscation of ZR should not have been accepted and the Committee ought to have further investigated this matter, if necessary by taking expert advice as to whether the signatures on the documents were forgeries. It is anticipated that if required the originals could be made available for scrutiny.

Wider Matters

[41] In the material presented to the Committee by [] counsel, certain personal circumstances of ZR were referred to, as well as the fact that [he/she] no longer held a practicing certificate. Those matters were not referred to in the decision of the Standards Committee and I conclude that they were not a part of the reasons for its determination. I note that in making the decision below I do not intend to suggest that there is any fetter on the ability of the Committee to take those matters into consideration should it consider it appropriate to do so in terms of its discretion under s 138 of the Act, but I have no particular views as to the relevance of those matters.

[42] I also note the comments of Mr ZR's counsel who had assumed that the review would be confined to those grounds raised by the Applicant. ZR was however informed of the scope of the review and has had the opportunity to comment.

Decision

- Pursuant to s 211 (1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Standards Committee that there has been no breach of Rule 15.2.3 is confirmed.
- Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Standards Committee that there has been no breach of rule 11.1 is confirmed.
- Pursuant to s 202 of the Lawyers and Conveyancers Act 2006, and on the matter of whether ZR filed immigration forms on behalf of clients by whom [he/she] was not instructed or engaged to act, the Standards Committee

decision is quashed. I make no recommendation and leave it open to the Standards Committee to decide whether further investigation should be undertaken into this matter, taking into account all circumstances.

DATED this 31st day of January 2014

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 AF on behalf of the Applicant
ZR as the Respondent
Mr X as Counsel for the Respondent
The Auckland Standards Committee 1
The New Zealand Law Society