

CONCERNING

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

AND

CONCERNING

a determination of the [The Committee]

BETWEEN

PC

Applicant

AND

[The Committee]

Respondent

DECISION

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

Introduction

[1] Mr PC has applied for a review of a decision by the [The Committee] (the Committee) which made a finding of unsatisfactory conduct in respect of Mr PC's conduct in providing his certification for an electronic land transaction otherwise known as e-dealing. The hearing to consider Mr PC's conduct followed an own motion inquiry instigated by the Committee which censured Mr PC, and ordered that he pay costs.

[2] In April 2016 Mr PC was employed as a lawyer by [DI] Lawyers Limited, an incorporated firm trading as [XY] Law (the firm).

[3] Ms GB was also employed by the firm. She was teaching Mr PC "conveyancing procedures", and supervised his work. Five months earlier in December 2015 the firm had announced that she would be a partner.

[4] Ms GB and Mr PC each held a digital certificate as a "conveyancing professional" issued to them by Land Information New Zealand (LINZ). Such certificates

entitle the holder to provide certifications, for the purposes of s 164A of the Land Transfer Act 1952 (LTA), in respect of e-dealings in Landonline which is regulated by LINZ.

[5] At 6 pm on 11 April 2016 Ms GB, who had left the office for the day, telephoned Mr PC at the office. She asked him if he would provide his certification of a transfer of a property, [Address] (the property) which was owned by Mr RK and his wife Ms GB (Mr and Mrs RK). She explained that the transfer of the property was to Mrs RK to give effect to a gift, that Mr and Mrs RK were longstanding clients of the firm and her personal friends, and that it was in order for Mr PC to provide his certification.

[6] Fifteen minutes later, at 6.15 pm, after looking at Ms GB's file on the matter, and noting from the firm's records that Mr and Mrs RK were existing clients of the firm, Mr PC provided his certification and submitted the transfer for registration.

[7] This review concerns whether Mr PC ought to have done so, and whether by doing so he failed to meet the requirements of s 164A LTA, and as a consequence contravened r 2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).

Own motion investigation

[8] At its meeting on 8 November 2016, the Committee resolved to commence an own motion investigation into Mr PC's conduct pursuant to s 130(c) of the Lawyers and Conveyancers Act 2006 (the Act).

[9] In doing so the Committee informed Mr PC on 22 November 2016 that "matters of potential concern to the Committee arose from Mr PC's:

- (a) apparent facilitation of the transfer of the property on or about 11 April 2016 from Mr and Mrs RK, as registered proprietors and transferors, to Mrs RK as transferee;
- (b) certifications he provided to LINZ to give effect to that dealing; and
- (c) Mr RK's later denial that [Mr RK] signed an A&I form held by the firm in respect of that transaction and his statement that he "did not consent to the transfer and ... had no knowledge of [it]".

[10] The Committee sought a response from Mr PC in respect of "three potential issues of professional conduct":

- (a) Whether Mr PC acted for Mr and Mrs RK, as transferors, as well as for Mrs RK, as transferee. If he did, whether he complied with r 6.1 of the Rules?
- (b) Whether Mr and Mrs RK had entered into a relationship property agreement authorising the transfer, and if not, why he effected the transfer without such an agreement or other relevant authority. Conversely, if they had entered into a relationship property agreement, why that agreement was not recorded as a “base document” on the A&I?
- (c) Who had prepared the A&I, and why it did not record the base document relied upon?

Standards Committee decision

[11] The Committee delivered its decision on 23 May 2017 and pursuant to s 152(2)(b) of the Act, determined that Mr PC’s conduct constituted unsatisfactory conduct pursuant to section 12 (a) and/or (c) of the Act.

[12] In reaching that decision the Committee observed that rule 2.5:¹

- (a) provides that where a lawyer gives a certificate “as to the truthfulness of the particular matter the person to whom the certificate is addressed is entitled to rely on it”.
- (b) requires that a lawyer who provides a certificate must “on reasonable grounds” believe that the matters certified are true having taken appropriate steps to ensure the accuracy of the matters certified.
- (c) applies to certificates given in the context of e-dealings under s 164A of the Land Transfer Act 1952.

[13] For the following reasons, the Committee found that Mr PC “failed to discharge his duties pursuant to r 2.5 “by having failed to take appropriate steps to ensure the accuracy of his certifications”:²

- (a) Because the completed A&I “is the lawyer’s proof of authority to effect the e-dealing, it is vital that [the A&I] is completed in its entirety with all dates,

¹ Standards Committee determination, 23 May 2017 at [13], citing *Connell v Odium* [1993] 2 NZLR 257 (CA) at 267; and *Coxhead v Coxhead* [1993] 2 NZLR 397 (CA) at 404.

² At [14]–[17].

full names, property address and details of underlying documents properly recorded”.

- (b) The A&I in that matter “did not record an underlying base document ... there was no base document on the clients’ file”.
- (c) It followed that Mr PC “did not have reasonable grounds to believe that a base document existed and there is no evidence that it did exist”.
- (d) In such circumstances, Mr PC “ought not to have made a certification ... and ... registered the transfer”.
- (e) Because Mr PC knew that the transfer gave effect to a gift by Mr RK to Mrs RK, it was his duty to sight the document evidencing the gift, satisfy himself that Mr RK had either received independent legal advice, or provided [Mr RK’s] informed consent to the transfer.
- (f) The Committee stated that no information had been provided to the Committee which evidenced that the “client file” reviewed by Mr PC recorded that Mr RK had been recommended to obtain, obtained, or declined independent legal advice.
- (g) Because Mr PC “did not take appropriate steps to ensure the accuracy” of the matter certified he “did not have reasonable grounds to believe that his certifications were true.
- (h) Because Mr PC would have known that registration of an e-dealing “leads to an alteration of the computer register [following which] indefeasibility of title takes effect” Mr PC’s contravention of r 2.5 “was significant”.
- (i) By completing his certificate and submitting the transfer instrument for registration, Mr PC had “misused his LINZ licence and digital certificate”.
- (j) It was not open to Mr PC “to have relied on the directions from his colleague, albeit a senior colleague whom Mr PC says was his direct superior”. This is because e-dealing certifications, as with other certifications provided by lawyers “in a range of transactions and dealings, are the personal responsibilities of that lawyer”. For that reason, Mr PC’s reliance on his direct superior’s assurances “were likewise insufficient to discharge his duties pursuant to rule 2.5”.

Application for review

[14] Mr PC filed an application for review with this Office on 4 July 2017. In seeking a reversal of the Committee's finding of unsatisfactory conduct against him he submits that the Committee:

erred in [its] decision that [his] conduct was unsatisfactory under rule 2.5 [because] there was neither a need for the A&I to record the base document nor for [him] to sight and enquire into the informed consent of the base document".

[15] In largely going over his submissions made to the Committee he contends that he:

- (a) relied on the assurance provided to him on the telephone on the evening of 11 April by Ms GB, who supervised his work, and who, in December 2015, had been announced by the firm as a partner. He says that Ms GB knew Mr and Mrs RK personally having acted for them for a number of years;
- (b) had no "proper basis or a reason" for doubting Ms GB's request that he sign and certify the transfer which Ms GB informed him she had overlooked and had to be completed that day;
- (c) had "sufficient knowledge [of the transaction] to ensure that his certifications [were] informed and true";
- (d) had "the authorisation of the parties, and ... had taken reasonable steps to confirm the identity of the parties";
- (e) states that a "base document" need not be "recorded on the A&I form if there is no base document";
- (f) contends that by "sighting the signed A&I form and identity documents, [he had] taken the reasonable necessary steps for [his] certifications which are limited to authority and identity". He added that there is no requirement "to check and record [a] base document on [the] A&I or even for [the] base document to exist"; and

- (g) The Property Law Section Guidelines of the New Zealand Law Society (PLS Guidelines) “do not state the base document as a minimum requirement.”³

[16] Concerning his role and responsibilities as a conveyancing professional, Mr PC considers that:

- (a) because a conveyancing professional’s role is limited to certification of the identity (and capacity) of the client there was no requirement on him to look behind the signed A&I on Ms GB’s file;
- (b) by making the enquiries he did he had discharged his obligations under r 2.5 when he provided his certifications for the transfer; and
- (c) Ms GB ought to take responsibility for any non-compliance issues concerning the underlying transaction.

Standards Committee response

[17] The Committee considers that Mr PC’s application shows that he does not understand that a conveyancing professional’s ability to effect registration carries with it a responsibility and obligation to protect the register. In the circumstances of this matter Mr PC was required “to identify [the] underlying authority for the transfer (either a document, or informed consent)”.⁴ The Committee’s reasons are that:

- (a) the A&I, which was undated, did not refer to and describe a base document which evidences the transaction described in the A&I, and gives rise to the e-dealing; and
- (b) Ms GB’s assurance did not constitute sufficient authority for Mr PC to certify and submit the transfer for registration that evening.

[18] In support of that position the Committee submits that:

- (a) whilst the terms “primary contact” and “conveyancing professional” reflect different roles in the e-dealing process, such roles frequently overlap;

³ New Zealand Law Society, “Property Transactions and E-dealing Practice Guidelines” (April 2015) at “Transfers and other instruments, commentary” <www.lawsociety.org.nz>. He also refers to Land Information New Zealand “e-dealing FAQs” <www.linz.govt.nz> and his own enquiries of LINZ.

⁴ New Zealand Law Society at 8.11.

- (b) the intention of these different roles in the e-dealing process is “to control the access rights for each in the Landonline system pursuant to their respective digital certificate[s]”;
- (c) section 164A LTA requires that e-dealings be signed and certified by a “practitioner”, as that term is defined in s 6 of the Act;
- (d) whereas the primary contact has a primarily “administrative” function concerning the day to day aspects of a transaction, the conveyancing professional is the “only person with access rights to sign and certify an instrument”;⁵
- (e) LINZ publications on e-dealings and Mr PC’s communications with LINZ on this subject do not support Mr PC’s argument that a signed A&I is the only document a conveyancing professional must sight before providing his or her certification in respect of the relevant dealing; and
- (f) the fact that a base document was not described in, and accompanied the A&I “puts the conveyancing professional on notice to make further inquiry to establish that there was sufficient underlying authority for the transfer”.

[19] Concerning the mitigating factors raised by Mr PC, the Committee submits that:

- (a) faced with an undated A&I which contained no reference to a base document, Mr PC was placed on inquiry “to take appropriate steps to either locate evidence of the underlying transaction, or in the absence of any base documentation, to otherwise establish the bona fides of the transaction”;
- (b) it was not sufficient for him to rely on Ms GB’s assurances alone;
- (c) there was no urgency to register the transfer on the evening of 11 April 2016. The ANZ mortgage had been repaid three days earlier on 8 April 2016 and no settlement was required before title to the property was transferred to Mrs RK;
- (d) any requirement by Mr and Mrs RK for Mr PC “to accommodate cultural differences cannot override the need for strict compliance with section 164A, the Landonline Protocols, the PLS Guidelines and the rules”; and

⁵ New Zealand Law Society, above n 3, at 8.10, 8.11.

- (e) contrary to Mr PC's contention that on 11 April 2016, when Mr PC provided his certification and submitted the e-dealing, Mr and Mrs RK were living together, evidence produced to the Committee by Mr RK showed that they had separated before that date.

Review on the papers

[20] The parties have agreed to the review being dealt with on the papers. This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

[21] I record that having carefully read the complaint, the response to the complaint, the Committee's decision and the submissions filed in support of and in opposition to the application for review, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available I have concluded that the review can be adequately determined in the absence of the parties.

Nature and scope of review

[22] 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.

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

[23] 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.

[24] 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.

Issues

[25] The issues for consideration on this review are:

- (a) Did Mr PC satisfy the requirements of r 2.5 when, on 11 April 2016, he provided transferor and transferee certifications in respect of a transfer instrument which he then submitted for registration at 6.15 pm that day whereby Mr and Mrs RK transferred their interests in the property to Mrs RK?
- (b) Having sighted the undated A&I which did not contain reference to, and a description of a "base document" in the space provided, and not having obtained further information relevant to the underlying transaction from Ms GB, her file on the matter, or the firm's records should Mr PC have declined Ms GB's to provide his certification?

[26] Because these issues interrelate I will consider them together.

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

Analysis

(1) Electronic land registration (e-dealing) — overview

[27] An appreciation of lawyers' role concerning the electronic registration of land instruments (e-dealing) is assisted by an understanding of lawyers' role concerning the registration of paper instruments.⁸

Paper instruments

[28] Before a paper instrument can be registered a certificate is required that the instrument is "correct for the purposes of the Land Transfer Act 1952".⁹ The PLS Guidelines explain that this certificate, "is not a mere procedural step". Its purpose is to:¹⁰

... assure the Registrar-General of land that the instrument is correct. If [the lawyer is] not aware of the circumstances surrounding a given transaction then [the lawyer] is not in a position to give the certification ...

[29] The certificate can be provided by "the applicant or party claiming under or in respect of the instrument, or by a practitioner employed by that applicant or party".¹¹ The term "practitioner" includes both a lawyer, and a conveyancer.¹²

[30] The responsibility carried by a lawyer who signs an instrument correct has been described by the High Court as a:¹³

... heavy burden placed upon him by s 164 and reg 7. Doubtless the primary purposes of those provisions is to endeavour to avoid fraud in the system, by ensuring that the parties to a transaction are those they actually claim to be. But when a solicitor certifies a transaction correct, she [or he] surely also certifies that any collateral matters ... has been given where such is required by law.

E-dealing

[31] In the context of electronic registration, or e-dealing, "similar obligations are placed on the certifier in terms of verifying identity, legal capacity and compliance with

⁸ Introduced by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 57.

⁹ Land Transfer Act 1952, s 164.

¹⁰ New Zealand Law Society, above n 3, at 1.16, 1.17, and 1.8 which refers to r 2.5.

¹¹ Land Transfer Act 1952, s 164(1).

¹² Section 2 LTA, referring to the definition of practitioner in s 6 of the Act.

¹³ *Registrar-General of Land v Marshall* [1995] 2 NZLR 189 (HC) at 200 — the issue being considered was "proper advice to the Maori Land Court of the transaction".

statutory requirements".¹⁴ The PLS Guidelines similarly state that a certificate provided in respect of an e-dealing "is not a mere procedural step".¹⁵

[32] In particular, the certifier must state that he or she has:¹⁶

- (a) ...authority to act for the party ... in relation to that class of instrument and that the party has legal capacity to give such authority; and
- (b) ... taken reasonable steps to confirm the identity of the person ...; and
- (c) the instrument complies with any statutory requirements ...; and
- (d) the [certifier] has evidence showing the truth of the certifications in paragraphs (a) to (d) and that the evidence will be retained ...

[33] Concerning the nature and extent of a lawyer's responsibility when providing his or her certification for an e-dealing, Guideline 8.68 provides that every such lawyer:

...needs to be satisfied personally that the authorisation from the client[s] is in order, that the identity of the client[s] has been established to the lawyer's satisfaction and that all certifications relating to that instrument are true and correct.

[34] Because the client's authority "provides protection against later challenges", the A&I must contain "details of documents properly recorded before execution by the clients" as well as completion of "all dates and names in full".¹⁷

[35] Whilst the A&I does not create any contractual relationship, once registered the instrument has the effect of a deed.¹⁸ The A&I forms, which are contained in the LINZ e-dealing User Guide (User Guide),¹⁹ can be generated within Landonline. They are reproduced in the PLS Guidelines.²⁰

[36] LINZ, which as noted earlier administers and regulates the Land Transfer system, both paper and electronic, issues a Landonline licence to law firms who must apply for a licence. The types of licence include an e-dealing licence to carry out electronic registration. Law firms to whom licences are issued must observe the terms of the licence.²¹

[37] Those persons in the firm who undertake property work do so via a digital certificate. There are two types (or levels) of digital certificate issued by LINZ. First, as a "conveyancing professional" issued to a lawyer who holds a practicing certificate to

¹⁴ *Adams' Land Transfer* (online looseleaf ed, LexisNexis) at S164.9.

¹⁵ New Zealand Law Society, above n 3, at 1.16.

¹⁶ Land Transfer Act, s 164A.

¹⁷ New Zealand Law Society, above n 3, at 8.21.

¹⁸ Land Transfer Act, s 164E(1).

¹⁹ Land Information New Zealand "e-dealing User Guide" at 5.4, <www.linz.govt.nz>.

²⁰ New Zealand Law Society, above n 3, at 8.42 – 8.45, appendices 1 (private individual); 2 (private corporate); 3 (public corporate).

²¹ Land Information New Zealand "Landonline license types" <www.linz.govt.nz>.

provide certification; secondly, as a “primary contact” issued to other members of the firm for searching and creating instruments in Landonline workspace, and to submit e-dealings (following certification). The User Guide explains that one person can perform both roles.²² The PLS guidelines which adopt similar descriptions for these roles²³ explain that “[i]t is a matter for each law firm to determine those within its office who are to be the holder of a Digital Certificate, and further to determine the level of activity that each individual holder of a Digital Certificate is authorised to undertake”.²⁴

[38] Because the protection of the Register is uppermost, holders of digital certificates must keep them secure.²⁵ Evidence of certifications must be kept for 10 years. Such evidence includes “the circumstances surrounding the preparation and electronic transmission of any instrument”.²⁶

[39] Section 25 of the Property Law Act 2007 requires that certain dispositions of land be in writing and signed by the person making the disposition. A lawyer providing a certification must also take this into account.

(2) A conveyancing professional’s obligations when providing e-dealing certifications - rule 2.5?

[40] Rule 2.5 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

[41] In essence, the prohibition in the rule requires that the lawyer concerned take positive steps to ensure that the truth of the matter in respect of which the lawyer has been requested, or proposes to provide a certificate is accurate.²⁷ Only if the lawyer then “believes on reasonable grounds” that “the matter certified is true” may the lawyer provide the certificate concerned.

²² New Zealand Law Society, above n 3, at 5.1, “Overview”.

²³ At Glossary to Part 2.

²⁴ At 52, Introduction to e-dealing guidelines, Digital Certificates and their Use.

²⁵ At 8.18–8.20, see also Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 r 11.4.

²⁶ Land Transfer Act, s 164C(3)(b)(ii); Land Transfer Regulations 2002, reg 4; New Zealand Law Society, above n 3, at 8.52.

²⁷ The rule goes beyond rule 3.03 of the New Zealand Law Society’s *Rules of Professional Conduct for Barristers and Solicitors* (7th ed, New Zealand Law Society, Wellington, 2008) which required that “a practitioner must take reasonable steps to ensure that any certificate given by that practitioner under section 164A of the Land Transfer Act 1952 (LTA, and the Land Transfer Regulations 2002 as amended by the Land Transfer Amendment Regulations (No.2) 2007) is correct and complies with the statutory requirements”.

(3) Discussion

[42] As noted in the introduction Ms GB, who had left the office for the day, telephoned Mr PC at 6 pm on 11 April 2015. She requested that, as a conveyancing professional, he provide his certificate in respect of the proposed transfer of the property from Mr and Mrs RK to Mrs RK to give effect to a gift.

[43] Ms GB explained to Mr PC that she had “forgotten to sign, certify and submit” the “e-dealing which had been concluded earlier that day”. She informed him that Mr and Mrs RK had been clients of the firm for some time and were “known personally” to Ms GB.

[44] Having located the file on Ms GB’s desk, Mr PC saw that Mr and Mrs RK’s “documents [which were] clipped together in a pile” included the A&I and supporting identity information. He noted, however, that the A&I was not dated and did not contain reference to a description of the “base document” in the space provided on the A&I.

[45] Mr PC says that when he spoke to Ms GB about those omissions she assured him that Mr and Mrs RK were her “personal friends”, the matter was “a gifting of property” the file was “complete” and the e-dealing was ready for certification.

[46] Despite that assurance Mr PC says that he checked the firm’s records for further information about Mr and Mrs RK. He noted that Ms GB had previously acted for them on “several other matters ... including ... [transfers to them] in their joint names”.

[47] Mr PC found no documentary evidence of a gift on Ms GB’s file. In response to a question from the Lawyers Complaints Service whether there was a relationship property agreement between Mr and Mrs RK, and if not why he had provided his certification, he stated that “he did not know the background of this matter” because they were not his clients.

[48] A lawyer who holds a digital certificate as a conveyancing professional and who provides a certification under s 164A LTA carries a weighty responsibility in doing so. This is because the lawyer concerned must be satisfied as to the overall validity and authenticity of the transaction before providing his or her certification. The following commentaries explain this responsibility in more detail by reference to a comparison with the responsibility of a lawyer who certifies a paper instrument “correct for the purposes of [the LTA]”.

[49] Concerning paper instruments, it has been observed that “[t]he purpose of the certificate is to assure [the Registrar] that the instrument is bona fide and genuine”.²⁸ In South Australia which has a similar land registry system, it has been stated that if a lawyer:

were to certify as correct an instrument which was the result of a transaction, the details of which were unknown to him ... to oblige an acquaintance or merely as a matter of form to secure registration ... that this would be an entire misconception of the nature of the responsibilities assigned to him [or her].

[50] In such circumstances, the author questioned how a lawyer who was “not aware of the circumstances surrounding a given transaction [could] give an assurance that it is bona fide”.²⁹

[51] A former Registrar-General of Land (the Registrar) refers to the “ethical” conduct involved in providing a certification which he describes as “centred on professional trust”.³⁰ The authors of a New Zealand Law Society seminar on this subject observed that:³¹

if acting for the purchaser [a lawyer] receive[s] a transfer from the vendor and signs it correct [the lawyer is] accepting both certain contractual assurances that the vendor is presenting a reasonable transfer and also ethical and inter-professional assurances as to the bona fide[s] of the transaction from the vendor’s point of view.

[52] The different functions of the Registrar, on the one hand, and the certifier on the other concerning paper instruments further explains the role of the certifier. The Registrar’s role “is more prescribed” because the instruments received “are examined on their face, tested against the records [of the Land Registry Office], and relevant law is applied”. The functions of the certifier on the other hand concern more “the behavioural aspects of the dealings — the part of the process which is external to the Registry and over which the Registrar has no control”.³²

[53] In the e-dealing context those functions have, in a sense, been conflated resulting in “a broader onus on the practitioner to have a far broader working knowledge

²⁸ EC Adams, *The Land Transfer Act 1952* (2nd ed, Wellington, Butterworths, 1971) at 381 – referred to in.

²⁹ JG Maher *Jessup’s Forms and Practice of the Land Titles Office of South Australia* (6th ed, Law Book, Sydney, 1982) at 394 referred to by B Hayes, “The Certificate of Correctness under the Land Transfer Act”, July 2000 (available on LINZ website) at p4.

³⁰ B Hayes *The Certificate of Correctness under the Land Transfer Act* (Land Information New Zealand, Wellington, 2000).

³¹ Tim Jones and Robbie Muir (paper presented to New Zealand Law Society Electronic Property Transactions – Getting it Right “eDealing Certifications” Seminar, March 2013) 41 at 43–44.

³² Hayes, above n 30, at 37.

of the dealing and more in depth understanding and knowledge of the client concerned".³³

[54] Applying these responsibilities to the circumstances Mr PC found himself in on 11 April 2016, by his own admission he did not know the background to this transaction. Whilst he undertook further enquiries, apart from obtaining confirmation from the firm's records that the firm had previously acted for Mr and Mrs RK, he was none the wiser about the transaction. Yet in such circumstances he nonetheless provided his certification and then submitted the transfer for registration.

[55] Putting to one side Mr RK's later denial that he signed the A&I, that he consented to the transfer, and that he had any knowledge of it, my overall view of the circumstances in which Mr PC provided his certificate is that [Mr PC] "did not [take] appropriate steps to ensure the accuracy of [his] certification".

[56] Whilst I acknowledge that Mr PC may have been caught off guard when he received Ms GB's request to provide his certification, and found it difficult to decline, that is precisely what he ought to have done in the circumstances. There was clearly no urgency to the transfer being registered that day. No settlement had taken place that day where another firm had acted for one of the parties. No settlement undertakings had to be honoured. In declining Ms GB's request that he provide his certification he would have explained to her that because she had acted on the file and was familiar with the transaction, it was for her to decide whether to provide her certification to the proposed transfer.

[57] In my view Mr PC's certification in these circumstances also displays a failing or shortcoming in the standard of competence required of a lawyer who holds a digital certificate as a conveyancing professional to provide certifications under section 164A LTA.³⁴ However, because this was not addressed by the Committee I make no finding on this issue.

[58] In conclusion, I make the general observation that in view of the responsibility a conveyancing professional carries when providing e-dealing certification, that this role is intended for the more experienced property lawyers in a firm, namely, partners, principals and associates appointed by the firm for that purpose pursuant to the firm's internal protocols.³⁵ Not inexperienced lawyers like Mr PC who had received his digital certificate as a conveyancing professional only two months earlier, and was under training and

³³ Tim Jones and Robbie Muir, above n 31. at 46.

³⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 3.

³⁵ New Zealand Law Society, above n 3, at 52, Introduction to e-dealing guidelines, Digital Certificates and their Use.

supervision from Ms GB. In this regard, in my view the firm must also carry responsibility for the outcome of this matter.

Decision

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

Orders

[60] Also confirmed are the Committee's orders that Mr PC be censured and ordered to pay costs.

[61] Such is the potential seriousness of providing another person with an inaccurate certificate, particularly concerning the registration of electronic land instruments, that I gave consideration to imposing a fine. Were it not for the fact that Mr PC was at the time being trained and supervised by Ms GB I would have done so.

[62] In addition to the costs ordered by the Committee, where an adverse finding is made, costs will be awarded in accordance with the Costs Orders Guidelines of this Office. It follows that Mr PC is ordered to pay costs in the sum of \$900.00 to the New Zealand Law Society by 28 February 2018, pursuant to s 210(1) of the Act. Pursuant to s 215(3)(a) of the Act, the costs order may be enforced in the District Court.

[63] A copy of this decision is to be provided to the Registrar-General of Land pursuant to sections 211(1)(b), and 159(1) of the Act.

[64] Pursuant to s206(4) this decision is to be made available to the public with the names and identifying details of the parties removed.

DATED this 31st day of January 2018

B A Galloway
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 PC as the Applicant
Mr [DI] as the Related Person
[The Committee] as the Respondent
The New Zealand Law Society
Registrar-General of Land