

LCRO 128/2010

CONCERNING

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

AND

CONCERNING

a determination of the Waikato Bay of Plenty Standards Committee 1

BETWEEN

MR BT

of Hamilton

Applicant

AND

MS YB

of Hamilton

Respondent

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

DECISION AS TO COSTS

[1] On 26 May 2011 I issued a decision as to the substantive matters in this review and upheld the decision of the Standards Committee to take no further action in respect of the complaint by Mr BT.

[2] At the conclusion of the hearing, Counsel for the Respondent, made an application for costs. Submissions were sought from the parties and have now been received. This is the decision on that application for costs.

The Applicant's submissions

[3] The Applicant expresses the view that he was exercising his basic human right to question and challenge a decision which is believed to be incorrect.

[4] He is disappointed as to the review decision, and adamantly maintains the position that all other parties were “wrong” to advise that proceedings under the Harassment Act were the appropriate form of proceedings.

[5] He makes the point that it was not necessary for the Respondent to be represented by counsel and that decision should not be visited on him by way of the costs order.

[6] He considers that it would be “justly unfair” to have an award of costs made against him.

The Respondent’s submissions

[7] Counsel for the Respondent refers to the discretion to award costs provided in section 210 of the Lawyers and Conveyancers Act 2006, and correctly notes that it is not open to the LCRO to adopt the position that costs will never be awarded to a successful party.

[8] That perhaps misrepresents the comment made by me at the hearing, which was to the effect that it is not usually the case that costs are awarded against a complainant in favour of a practitioner. It is worth noting that a Standards Committee does not have jurisdiction to make an order for costs against a complainant.

[9] He describes the complaint as unmeritorious and vexatious. He also makes reference to the principles followed by the Court in civil proceedings, citing *Belling v Belling* (1996) 9 PRNZ 296, Hammond J, where His Honour endorsed Fisher J’s comment in *Aplin v Lagan* (1993) 10 FRNZ 562 at page 576 that:

“While an unrepresented party should not be penalised on that account alone, if the result has been to throw an extra burden of legal cost upon the represented party, there is no reason why some recognition should not be given to that”.

[10] On the basis of the High Court principles, he considers that an appropriate costs order would be \$1,500.

Considerations

[11] Section 193 of the Lawyers and Conveyancers Act provides an absolute right to apply for a review of a Standards Committee decision. That right builds on the right to complain about the conduct or service of a lawyer provided by section 130, and reinforces the consumer protection provisions of the Act.

[12] An application to the LCRO is not by way of an appeal. There is no requirement to provide grounds for review or adduce evidence in support of the application.

[13] A review involves a consideration of all of the material before the Standards Committee including issues of law, fact and credibility.

[14] It is important that the rights of consumers of legal services are not restricted or diminished by costs awards. It is for that reason that costs will only be awarded sparingly by the LCRO against complainants. That is not to say that they will never be awarded and the discretion residing in the LCRO must be exercised properly.

[15] The circumstances in which costs may be awarded against a complainant are set out in paragraph 13 of the LCRO Costs Guidelines, which refers to circumstances where the complainant has acted vexatiously, frivolously, improperly or unreasonably.

[16] Mr WI would argue that this is the case. He says that the complaint was unmeritorious and vexatious.

[17] The Applicant certainly strays close to that when he alleges that the Respondent advised DQ to pursue proceedings under the Harassment Act for the purpose of generating additional fees. There are absolutely no grounds for that allegation.

[18] The Applicant has also used extravagant language when pressing his case, language that could be defamatory in other fora. However, that does not in itself make the review application vexatious, frivolous, improper or unreasonable.

[19] The appropriate outcome for the Respondent has been provided by rejecting the Applicant's claim.

[20] Whilst I have some sympathy for the Respondent I do not think that this is a case where it can be said with certainty that the Applicant was acting vexatiously, frivolously, improperly or unreasonably. The Applicant holds a genuine view, albeit that he seems incapable of acknowledging that there may have been more than one correct option.

[21] In pursuing his views he has exercised his right to have the Standards Committee decision reviewed, and that right must be acknowledged. The application of the rules as to costs awards in civil proceedings is not appropriate, and in all the circumstances I have come to the view that costs should lie where they fall.

DATED this 17th day of June 2011

Owen 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:

Mr BT as the Applicant
Ms YB as the Respondent
WI QC as counsel for the Respondent
The Waikato-Bay of Plenty Standards Committee 1
The New Zealand Law Society