

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of [a North Island] Standards Committee

**BETWEEN**

**MR XG**

Applicant

**AND**

**MR BC**

Respondent

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

**Introduction**

[1] Mr XG has sought a review of the determination by [A North Island] Standards Committee to take no further action in respect of his complaint about Mr BC who required identification from Mr XG before he would pay Mr XG a bequest due to him from his trust account.

**Background**

[2] Mr XG is a beneficiary of an estate.

[3] Mr BC acts for the executors in the administration of the estate.

[4] The amount due to Mr XG was approximately \$29,000 and the funds to make payment of this amount were held in Mr BC's trust account. The executors instructed Mr BC to make payment to Mr XG provided he was satisfied as to Mr XG's identity.

[5] Mr BC requested all beneficiaries of monetary bequests (of which there were 70) to provide photographic ID such as a driver's licence or passport as proof of identity. The photographic ID was to include all data, including the expiry date and the relevant number.

[6] Mr XG objected to this on privacy grounds. He provided a copy of his licence (verified by a JP) but obliterated all details apart from his name and signature. This was attested to by a JP who certified that he had sighted the original driver's licence.

[7] Mr BC rejected this on the basis that a copy of the original licence (showing all details) was not provided. He also rejected another photograph provided by Mr XG in which he had covered his face with his hair.

[8] Mr BC declined to make payment to Mr XG unless his requirements as to identity were satisfied.

[9] Mr XG complained to the New Zealand Law Society Complaints Service.

[10] The Standards Committee recorded its determination in the following way:<sup>1</sup>

Mr BC is acting on the express instructions of the executors and, to comply with the trust account rules is entitled to satisfy himself as to the standard of acceptable identification. The Committee compared this to the identity requirements for the Financial Transactions Reporting Act 1996 and for regular e-dealing with Land Information NZ.

The complainant provided copies of his Driving Licence with the face and unique identifier obscured as well as providing photographs of himself with his hair over his face but with his identify confirmed by a JP. The Committee believes that Mr BC was acting appropriately in not accepting either of these as adequate identification. The practitioner has told the complainant that if he does not have some form of photographic identification, a photograph of himself along with the statutory declaration from somebody who has known Mr XG for a number of years would be reasonable.

The Committee noted that there has been some sort of a ruling from the Privacy Commissioner but the Committee believes that Mr BC is perfectly entitled to nominate the form of reasonable identification that he requires to make payment from his trust account.

The Committee believes that Mr BC is acting reasonably and would be considered imprudent to do otherwise. Furthermore there were express instructions from the executors to be rigorous in the identification process, to avoid any personal liability coming back on the executors.

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<sup>1</sup> Standards Committee decision dated 6 May 2011.

**Review**

[11] The parties were invited to attend a mediation to enable them to agree on a form of identification that would meet each of their requirements.

[12] Mr BC responded:<sup>2</sup>

May I remind you that my legal obligation is to my client, the Trustees of the Estate of Mrs XG. My obligation is not to [Mr XG] and his views on whether he accepts or otherwise my requirements for identification are irrelevant.

Likewise, with respect, nor am I obligated to your office to attend any mediation. A mediation that will serve no purpose whatsoever as I will not change my requirements. Further I am not going to waste time by attending, unpaid, a mediation when I have wasted hours already on XG who is pushing his personal barrow on identification matters. Either he accepts the Trustees terms for identification, as the other 70 beneficiaries have done or he doesn't inherit through want of identification.

[13] Mr BC was not prepared to consider alternatives to his requirements.

[14] A review hearing was therefore scheduled and took place [on 27 March 2013]. It was hoped that by providing the parties with the opportunity to meet that they would each moderate their positions and reach a pragmatic solution. Unfortunately that did not occur. It therefore remains for me to complete a formal decision on Mr XG's application.

[15] The operation of a lawyer's trust account is regulated by the Lawyers and Conveyancers Act (Trust Account) Regulations 2008. Regulation 12(6) requires:

A practice may make transfers or payments from a client's trust money only if –

- (a) the client's ledger account has sufficient funds and they are available for that purpose; and
- (b) the practice obtains the client's instruction or authority for the transfer or payment, and retains that instruction or authority (if in writing) or a written record of it; and
- (e) payments to a third party are made in a form that permits the crediting of the money only to the account of the intended payee; and
- (d) transfers to another client are by way of trust journal entry.

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<sup>2</sup> Letter from Mr BC to LCRO 3 November 2011.

[16] Mr BC therefore needed the authority of the executors of the estate before making any payment to beneficiaries. The executors delegated their responsibility to identify the beneficiaries to Mr BC. Mr XG, as with a number of the beneficiaries, was not known to the executors or to Mr BC. Mr BC therefore required all beneficiaries to provide photographic ID with all details being legible.

[17] Both Mr BC and the Standards Committee have referred to the Land Information New Zealand standard for verification of identity for registration under the Land Transfer Act 1952,<sup>3</sup> taking note that these have been endorsed and ratified by the New Zealand Law Society. Mr BC also makes much of his activity in making known to the Registrar-General his views about the potential for fraud in the electronic land transfer system.<sup>4</sup>

[18] He takes issue with an observation by me that Mr XG's comments on Mr BC's requirements had some merit. Mr BC considered that this "clearly indicates [my] distinct lack of understanding of the requirements of lawyers and the Law Society's practice in New Zealand".<sup>5</sup>

[19] Mr BC would be well advised to verify the correctness of his statements before committing himself to print. It unfortunately reveals an approach to this matter that has not helped to resolve Mr XG's complaints, who was entitled to hold to whatever principles he may adhere to.

[20] I find it somewhat difficult to understand how providing photographic identity such as a driver's licence or passport directly to Mr BC will establish that Mr XG is indeed who he says he is. The identity document could have been obtained unlawfully from Mr XG. It is for the bank to establish Mr XG's identity when he opens an account, and the requirements of Regulation 12(6)(c) of the Trust Account Regulations are that payment to a third party must be in a form that permits the crediting of the money owing to the account of the intended payee.

[21] Paragraph 6.7 of the Lawyers Trust Accounting Guidelines states:

Every payment should be drawn in a way that permits the crediting of money only to the account of the intended payee. For electronic payments, the payee should provide their account details (e.g encoded deposit slip) and this must be checked

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<sup>3</sup> Standard for Verification of Identity for registration under the Land Transfer Act 1952, published 11 February 2011.

<sup>4</sup> Above n 2.

<sup>5</sup> Above n 2.

before the payment is sent (see also guideline 11.8) For cheques, these should be printed "not transferable" or equivalent crossing, and without the words "or order" or "or bearer".

[22] The requirement imposed by Mr BC (as recited by Mr XG in his complaint) was that the intended beneficiary provide photographic ID with all details legible. I do not see how that would establish that the sender of the document was Mr XG. All it would do is indicate that the sender of the document was somehow in possession of it.

[23] The LINZ verification that Mr BC refers to requires that the certifier must compare the photo ID with the person standing in front of him or her, and certify that they are one and the same person. This is the added security that was seemingly omitted from Mr BC's requirements,<sup>6</sup> although he did subsequently indicate that he was prepared to accept a photograph of Mr XG with a declaration by someone who had known him for a number of years. However, I am not sure that this would establish that a payment credited to a bank account in the name of Mr XG would be received by the correct person.

[24] Having made these observations, however, I recognise that the trust account belongs to Mr BC and it would be wrong for the Standards Committee or myself to insist that Mr BC makes a payment to Mr XG. In the present case, it is the executors of the estate who have an obligation to perform the terms of the Will and they cannot delegate that responsibility to Mr BC. At the review hearing, I suggested to Mr BC that he could resolve the situation by making payment of the bequest into a bank account of the executors for them to make payment as they see fit. That suggestion did not seem to meet with Mr BC's approval either.

[25] I note Mr BC's suggestion that the bequest would be divided between the remaining beneficiaries if Mr XG did not comply with Mr BC's requirements<sup>7</sup> - it seems to me that this would place the executors in breach of their obligations to Mr XG as a beneficiary.

[26] As the parties were not prepared to discuss any pragmatic solution at the review hearing, I advised Mr XG that he should direct his attention to the executors of the estate. It is they who have the obligation to carry out the terms of the Will and it is their

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<sup>6</sup> I must acknowledge here that I have not sighted the letter sent by Mr BC to Mr XG setting out his requirements and have made my comments based on the material provided. It may be therefore that Mr BC did require the proposed payee to have the photo ID verified by an appropriate person.

<sup>7</sup> Above n 2.

instructions that Mr BC must follow.

[27] Both parties must carry some responsibility for their unbending adherence to their positions, but in the circumstances I concur with the Standards Committee that no further action is appropriate in respect of this matter. Mr XG must look to his remedies elsewhere. It is unfortunate that Mr BC has declined to consider any other proposals and in so doing has made somewhat derogatory remarks about Mr XG, and others.

### **Decision**

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

**DATED** this 24<sup>th</sup> day of June 2013

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**O W J 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 XG as the Applicant  
Mr BC as the Respondent  
[A North Island Standards Committee]  
The New Zealand Law Society