

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

WA

Applicant

AND

AD

Respondent

DECISION

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

Introduction

[1] Ms WA has applied for a review of a decision dated 9 May 2012 by [City] Standards Committee [x] determining her complaint about Ms AD's conduct.¹ The Committee considered Ms AD including information that was confidential to Ms WA in a memorandum she filed in court and served on the other party to the dispute was a breach of rule 8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules) 2008 (the Rules), and was unsatisfactory pursuant to s 152(2)(b) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] Although the Committee ordered Ms AD to apologise to Ms WA, and to pay costs and expenses to the New Zealand Law Society (NZLS), Ms WA considered more substantial penalties were appropriate, including compensation for losses she attributes to Ms AD and her employer. She continues to press her claim for compensation on review. She also wants the fees of \$1,600 she paid refunded and her bill cancelled.

[3] The Law Society opened a separate file with respect to Ms WA's complaints about conduct by Ms AD's employer. The employer's conduct is not the subject of this review.

Background

[4] Ms AD acted for Ms WA in an application to set aside a judgment that had been obtained against her in a debt recovery proceeding. The debt related to fees claimed by Ms WA's former lawyer arising from a Family Court proceeding.

[5] A brief history of the professional relationship between Ms WA and Ms AD is set out in the Committee's decision. It includes references to "acrimonious exchanges between Ms WA and Ms AD",² Ms WA's dissatisfaction with advice she was being given and steps Ms AD had taken in the course of acting for her. It also refers to the contents of a memorandum Ms AD filed dated 22 June 2011 seeking leave to withdraw as solicitor on the record for Ms WA (the memorandum).³

[6] The memorandum sets out the background to Ms AD's application for leave to withdraw, includes detailed evidence of the dispute over costs between Ms WA and Ms AD, questions Ms WA's credibility, is generally critical of her and the instructions she gave, says that she acted against advice given by Ms AD and her employer, and that Ms WA's "serious unfounded allegations regarding counsel's professionalism ... are not conducive to a healthy solicitor-client relationship".⁴ Ms AD then lists 15 separate areas of complaint she says Ms WA had made of her, impugning her professionalism, experience, honesty and competence. She then filed the memorandum in court, and served a copy on the plaintiff in the debt recovery proceeding.⁵

[7] The Committee noted Ms WA's outrage at Ms AD's filing and serving the memorandum, and her view that Ms AD should be "seriously disciplined". It also referred to Ms WA's application to set aside the judgment having been struck out, and costs being awarded against her. Ms WA believes that outcome is solely based on the memorandum, and various failings by Ms AD or her employer to meet their professional obligations to her.

[8] The Committee also noted Ms AD's acknowledgement that the content of the memorandum was inappropriately detailed, and in breach of her obligations of confidentiality to Ms WA. It recorded Ms AD's acceptance of her wrongdoing, explanation of her thinking and motivations. Those included that she had acted alone in drafting, filing

¹ Standards Committee determination (9 May 2012).

² At [18].

³ Memorandum Seeking Leave to Withdraw as Solicitor on Record (22 June 2011).

⁴ At [9].

⁵ Above n 1, at [28].

and serving the memorandum,⁶ and had found her professional relationship with Ms WA stressful and difficult.

[9] The Committee considered all of the materials the parties had provided, noted Ms WA's concerns and concluded that the only matter which required a disciplinary response related to the memorandum. As mentioned above, the Committee's view that the memorandum included inappropriate and confidential details in breach of rule 8 constituted unsatisfactory conduct, required Ms AD to apologise, and pay costs and expenses to the NZLS.

[10] Ms WA was dissatisfied with the outcome and the orders, and applied for a review.

Review Application

[11] Ms WA's application for review reiterated her original complaints, updated her compensation claim and included further submissions and documentation. She sought remedies for breaches of privacy, over which this Office has no jurisdiction, again emphasising the content of the memorandum about which the Committee had already recorded a disciplinary finding. In essence, Ms WA believes Ms AD should be penalised far more harshly, and ordered to pay substantial compensation for losses Ms WA attributes to her conduct that continue to accrue.

Role of the LCRO

[12] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.

Scope of Review

[13] The LCRO has broad powers to conduct 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. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review and the extent of the investigations necessary to conduct that review.

Discussion

⁶ At [28].

[14] The decision records the Committee's consideration of all the information provided in respect of the complaint, and reaches a conclusion which I am unable to disagree with, having carefully considered all of the information available on review. That information includes Ms WA's evidence and submissions at the review hearing in [City] on 25 February 2015. I have been unable to identify any reason to depart from the Committee's reasoning, its decision, or the exercise of its discretion in imposing orders under s 156 of the Act.

[15] While I accept that Ms WA considers she should be entitled to compensation, if she is, there are various questions, including causation, foreseeability and contribution that are not suitable matters for this Office to determine. The amount of compensation Ms WA claims also significantly exceeds the \$25,000 maximum that an LCRO can order under s 156(1)(d) of the Act.

[16] The only real question on review is whether there is good reason to interfere with any of the orders the Committee made, or to make further orders. The orders the Committee made were available to it, and represent a proportionate, measured response to the complaints taking into account the functions of penalty orders in a professional disciplinary context. Those functions include punishing a practitioner, acting as a deterrent to other practitioners, and reflecting the public's and the profession's condemnation or disapproval of the practitioner's conduct.⁷ The seriousness of the conduct may affect which specific penalty is selected, depending on which particular function is being met.

[17] In the scheme of things, whilst regrettable, Ms AD's conduct was a long way from the most serious.

[18] In considering whether a punitive order is appropriate, to punish Ms AD, deter other practitioners or to reflect condemnation or disapproval of conduct, it is relevant to consider whether there is any evidence to support Ms WA's view that Ms AD was vindictive and acted deliberately in a calculated attempt to cause Ms WA harm.

[19] Ms AD's lawyers simply say she was under pressure, and that her relationship with Ms WA was difficult. Although Ms WA's view is quite different, the Committee's view that Ms WA brought the costs consequences on herself through her own choices was open to it.

[20] The memorandum is more akin to a file note setting out all the grounds in support of the firm's application to withdraw as lawyers on the court record, but without having

⁷ *Wislang v Medical Council of New Zealand* [2002] NZAR 573 at [21].

applied the usual filters including relevance, forum, confidentiality and solicitor-client privilege before she filed and served it.

[21] I have carefully considered the contents of the preceding correspondence, and the memorandum. I have been unable to detect any support for Ms WA's speculations as to Ms AD's motivations. Nor have I been able to identify any other reason that would support the imposition of different orders. It is entirely proper that Ms AD should apologise for her lack of judgement, and I understand she has done that. That does not mean she should be disproportionately punished for that lapse.

[22] Given the finding of unsatisfactory conduct, it is also appropriate that Ms AD be ordered to pay the Law Society's costs. Given the patent professional failing, and her swift acknowledgement of it, there is no reason to adjust the amount of the costs order.

[23] The function of deterrence, hand-in-hand with education, can be met by publication of the decision pursuant to s 206(4) of the Act, which gives a LCRO discretion to publish decisions as she considers necessary or desirable in the public interest. I do not consider it necessary in the public interest to include details that would identify anyone concerned, including Ms AD and Ms WA.

[24] The decision and orders made are therefore confirmed on review, subject to an amendment to clarify that the finding of unsatisfactory conduct for breach of a practice rule is made pursuant to s 12(c).⁸

Costs

[25] An LCRO has a wide discretion to consider costs pursuant to s 210 of the Act, and the LCRO's Costs Orders Guidelines.

[26] Ms WA was entitled to apply for a review, and did so. Although the materials and submissions she provided were repetitive and needlessly extensive, some latitude is extended to Ms WA as a consumer of legal services. Overall, she has not conducted herself in a manner that would attract an order for costs against her.

[27] An adverse finding was made against Ms AD by the Committee, and that has been confirmed on review.

[28] Ms AD acknowledged her conduct very early in the complaints process, and acknowledged the impropriety of filing and serving the memorandum. She has done

⁸ The Committee recorded the unsatisfactory conduct finding as having been made under s 152(2)(b) of the Act without specifying which part of the definitions set out in s 12 the finding related to.

nothing to add to the costs of this review, and there is no reason why she should be ordered to pay costs.

[29] In the circumstances, no costs orders are made on review.

Decision

- (1) Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the [City] Standards Committee [x] is confirmed, subject to an amendment that the finding of unsatisfactory conduct was made under s 12(c) of the Lawyers and Conveyancers Act 2006.
- (2) Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, I direct publication of this decision with identifying features removed.

DATED this 18th day of March 2015

D 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:

Ms WA as the Applicant
Ms AD as the Respondent
Mr ZF as a Representative for the Respondent
Ms XB as a Related Person under s 213
[City] Standards Committee [x]
New Zealand Law Society