

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

BB AND AB

Applicants

AND

CC

Respondent

DECISION

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

Introduction

[1] Ms BB has applied for a review of the [City] Standards Committee [X's] decision to take no further action in respect of her complaints against Mr CC.

Background

[2] Ms BB says she worked with Mr CC over a period of weeks, but he did not pay her, she felt bullied and mistreated. Although Ms BB says she raised her concerns over payment with him, and he suggested they discuss the situation, she believed he may not be genuinely open to her concerns, and laid a complaint to the New Zealand Law Society (NZLS).

Standards Committee

[3] The Standards Committee considered the background to Ms BB's complaints about Mr CC's refusal to pay her, her allegations about the way he

treated her while she worked with him, and her belief that his conduct constituted breaches of a number of Rules of Conduct and Client Care (the rules).¹

[4] The Committee considered whether it had jurisdiction to consider a complaint arising out of what appeared to be an employment dispute between two lawyers, and if it did, whether Mr CC had breached any of the rules in his dealings with Ms BB.

[5] The Committee reviewed the definitions of unsatisfactory conduct contained in s 12 of the Lawyers and Conveyancers Act 2006 (the Act) focusing on lawyers' conduct as regulated by subsection (a), (b) and (c). The Committee did not consider that the conduct Ms BB complained of had occurred when Mr CC was providing "regulated services" or "legal services" to her, and that it therefore fell outside the definitions contained in ss 12(a) and (b). The Committee focused on s 12(c), and whether the conduct alleged contravened any provisions of the Act, any regulations or practice rules made under the Act or any other Act relating to the provision of regulated services.

[6] The Committee considered whether Mr CC had failed to maintain proper standards of professionalism in his dealings with Ms BB, by acting in what she describes as an abusive and intimidating manner towards her and others in his office.² It considered whether Mr CC had failed to honour undertakings regarding Ms BB's employment, payment and training, and failing to pay her for services she had rendered.³ The Committee also considered whether Mr CC's conduct towards Ms BB had been deliberately misleading and deceptive, by leading her to believe he would employ her in a paid full-time position as a lawyer, and train her in the practice of [jurisdiction] law.

[7] The Committee noted Mr CC's response about his intentions towards Ms BB, difficulties he had experienced in paying her, and his attempts to make amends.

[8] The Committee's view was that the allegations arose in the context of an employment dispute about unpaid wages, that the dispute was unsuited to resolution under the rules, and that it was not the Committee's function to resolve employment related disputes. In the circumstances the Employment Relations

¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 10,10.1,10.3,10.3.1,10.7,11.1and 2.3.

² Rules 10 and 10.1.

³ Rules 10.3,10.3.1 and 10.7.

Authority or civil courts provided Ms BB with an adequate alternate remedy that it would be reasonable for her to exercise. In the circumstances the Committee decided to take no further action on Ms BB's complaints pursuant to s 138(1)(f) of the Act.

[9] In the course of trying to resolve Ms BB's dispute with Mr CC, Mr AB attended Mr CC's offices. A member of Mr CC's staff complained to him that she had felt intimidated and physically threatened by Mr AB. Ms BB and Mr AB say Mr CC served a trespass notice on Mr AB, and that a complaint was laid to Police. Ms BB considers that by serving a trespass notice, Mr CC had used a legal process for an improper purpose in breach of rule 2.3.

[10] The Committee considered that in circumstances where the Police were involved, there was no improper purpose, and decided to take no further action on this aspect of the complaint pursuant to s 138(2) of the Act.

[11] Ms BB was dissatisfied with the Committee's decision in both respects, and applied for a review.

Review application

[12] Ms BB believes the Committee should have considered whether Mr CC's conduct constituted misconduct under the Act, and erred in determining the complaint under s 138 of the Act, referring to policy considerations in the Act regarding the regulation of conduct of lawyers. Her view is that the Committee did not address her complaint about specific breaches of the rules in any substantive way, and wrongly limited the extent to which a lawyer is responsible for his or her actions "whilst operating in their capacity" as a lawyer.

[13] Ms BB seeks orders requiring Mr CC to pay her, compensate her for losses arising from his conduct, and face disciplinary action for a pattern of behaviour she describes as "unbecoming of a legal practitioner and calls into question his suitability to engage in the practice of law".

[14] Mr AB expresses a raft of constitutional concerns, generally supports the position his daughter has taken, and objects to Mr CC serving a trespass notice on him.

Role of the LCRO

[15] 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

[16] 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.

Review hearing

[17] Ms and Mr AB attended a review hearing in Auckland on 12 May 2015. Mr CC was not required to attend, and the hearing proceeded in his absence.

Review issues

[18] Mr AB's broader concerns cannot be addressed by this Office. His concern that Mr CC issued a trespass notice to prevent him from returning to his offices does not raise a professional standards issue. While I accept Mr AB felt affronted, that is not a matter that can be resolved by this review, and will receive no further attention in the course of this review.

[19] Ms BB's complaint was originally laid in January 2012. [Sentence Redacted].

[20] Ms BB's concern that Mr CC may have issued a trespass notice for an improper purpose is not well supported by the facts she relays. The trespass notice prevented Mr AB from coming to Mr CC's offices. As a matter of general principle, it was open to Mr CC to limit anyone's access to his offices. He was not obliged to allow Mr AB in. By issuing a trespass notice he prevented access. His conduct did not fall below any professional standard by so doing. Given his apparent perception that Mr AB may cause disruption, there is no good reason to believe Mr CC's motives in issuing the trespass notice were improper. There is

no good reason to depart from that aspect of the Committee's decision, and it is therefore confirmed.

[21] With respect to her own difficulties with Mr CC, the outcome Ms BB seeks is a finding of misconduct against him. It is beyond the jurisdiction of this Office to make such a finding, although this Office has power to determine a review by a referral to the Tribunal. The allegations Ms BB makes do not support any such referral being made.

[22] While it is true that Ms BB may have other means through which to pursue claims against Mr CC arising from having worked with him, that does not mean that her complaint does not raise any professional standards issues that could have been addressed by the Committee, but the decision records the Committee having turned its mind to those.

[23] [Sentence redacted]. The question on review is whether it is necessary or appropriate to take any further action in respect of Ms BB's complaints about the way in which she says Mr CC treated her. In all the circumstances, the answer to that question is no.

Discussion

[24] Ms BB was a lawyer when she went to work with Mr CC. She says she found his manner towards her abusive and intimidating. She says that when he invited her to discuss her concerns with him she declined because she was fearful of his response, and instead she laid a complaint.

[25] Mr CC has given no evidence with respect to the concerns Ms BB expressed. On his behalf counsel submits that the conduct Ms BB complains of is in the nature of a dispute arising from their employment relationship, along with disputes over payment and conditions such as training that should be covered under an employment agreement.⁴

[26] Ms BB did not have one of those. She says she left her previous position with a law firm before she had secured any kind of written agreement with Mr CC that would have recorded the arrangements between them. Ms BB says she had no certainty when she first began to work with Mr CC whether she was there as a contractor or an employee. What was clear to both her and Mr CC was that she was qualified as a lawyer and held a current practising certificate.

⁴ Submissions DD to LCRO (8 June 2015) at [8] to [11].

[27] Regardless of her status as an employee or otherwise, as a lawyer, Ms BB was entitled to be treated by Mr CC with respect and courtesy, because that is what was required of him by rule 10.1 which simply says: “A lawyer must treat other lawyers with respect and courtesy”.

[28] Counsel for Mr CC submits that the Committee was correct to conclude that Ms BB’s remedies in the employment and civil jurisdictions were adequate and it would be reasonable for her to exercise those rather than have the Committee determine that Mr CC’s conduct had fallen below proper professional standards, and in particular that he had contravened rule 10.1.⁵

[29] Counsel’s argument overlooks the fact that the working relationship between Mr CC and Ms BB was that of two lawyers who owed one another professional obligations arising from their dealings with one another. There is nothing in the wording of rule 10.1 that suggests, as counsel submits, that it only applies when a lawyer is providing regulated services. The rules in Chapter 10 proceed from the general to the specific.

[30] Rule 10 refers to proper standards of professionalism in the lawyer’s dealings. On its face, that rule appears to generally capture a lawyer’s professional, as opposed to personal, dealings. Rule 10.1 is similarly general. Rule 10.2 is more specific, and specifically regulates conduct when a lawyer is “acting in a matter”. Rules 10.2.1 to 10.2.6 appear to relate to conduct when a lawyer is or has been acting in a matter for a client.

[31] Unlike ss 12(a) and (b), a contravention of s 12(c) does not require conduct to occur at a time when regulated services or legal services are being provided.

[32] If rule 10.1 was only intended to regulate conduct that occurred when regulated or legal services were being provided, it would say so. It does not. Whether Mr CC was providing regulated services, or legal services, does not appear to be relevant to consideration of rule 10.1.

[33] Counsel’s argument relies on a general premise that conduct between lawyers cannot be the basis of a complaint if one is an employee and the other an employer. That was not the approach taken by the Committee, and given the apparently broad reach of rule 10.1 the Committee’s approach appears to be well supported.

⁵ At [9] to [11].

[34] Ms BB's evidence does not constitute a sufficient basis for a finding that Mr CC breached his obligation to treat her with respect or courtesy. I accept that Ms BB felt bullied and mistreated. That does not equate to a finding that Mr CC bullied or mistreated her, or to a finding that his conduct fell below a proper professional standard.

[35] Mr CC appears to accept that he had an obligation to pay Ms BB something, but for various reasons was unable to. The apparent lack of any formal agreement between them over payment and other terms does not rest entirely on Mr CC.

[36] Ms BB's inability to reach agreement over the terms on which she would work with Mr CC arose from her haste in taking up the opportunity before she had any formal agreement. If she had taken the time to secure a formal agreement before she started working with Mr CC, they both would have known whether he was committed to employing her in a paid full-time position as a lawyer, and training her in the practice of [jurisdiction] law as she hoped.

[37] Clearly the opportunity Ms BB took up was not all she had hoped it would be. That does not mean that Mr CC's professional conduct towards her fell below a proper professional standard. The evidence strongly suggests that the difficulties Ms BB encountered in trying to recover her position were not of Mr CC's making, in circumstances where he had not made any formal commitment to her.

[38] I have carefully considered all of the materials available on review, including all the material that was before the Committee, and Ms BB's detailed submissions at the review hearing. The evidence does not support a finding that Mr CC contravened a proper standard of professionalism in his dealings with Ms BB, or that his conduct constituted a contravention in any of the other ways Ms BB alleges.

[39] Having regard to all the circumstances, further action on Ms BB's complaint is unnecessary and inappropriate. If she has a remedy, it is elsewhere. Pursuant to ss 211(1)(a) the Committee's decision is confirmed.

Decision

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

DATED this 26th day of August 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 BB and Mr AB the Applicants
Mr CC as the Respondent
Mr DD as the Respondent's Representative
The [City] Standards Committee [X]
The New Zealand Law Society