LCRO 140/2011

CONCERNING	An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the Auckland Standards Committee 4
BETWEEN	**IO** Applicant
AND	**AU** of Auckland Respondent

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

DECISION

Introduction

[1] This is an application for review of the decision of the Auckland Standards Committee 4 which considered a complaint by IO (the Applicant) against his former solicitor AU (the Practitioner). The Standards Committee declined to uphold the complaint, resolving to take no further action. The Applicant seeks a review of that decision.

Background

[2] The Applicant and his wife met with the Practitioner in November 2007 to discuss getting his orphaned niece, then aged 15 years, from Pakistan into New Zealand. Instructions to begin adoption proceedings were received in March 2008. Matters progressed satisfactorily but slowly until March 2010 when the Applicant and his family went to Australia.

[3] The Practitioner recalls he was told that the Applicant was going to Australia for a short period and that only later he discovered that in fact the Applicant was embarking on advanced studies which would keep him in Australia for three to four years. The Applicant's recollection is that he informed the Practitioner of the reason for his move

and, if not directly then by implication, that he and his family would be out of the country for some years.

[4] The proceedings moved towards a hearing but it is clear from the correspondence on file that the relationship between the Applicant and the Practitioner was under strain, and ultimately the Practitioner in a letter dated 10 September 2010, advised the Applicant that he considered that he had lost the Applicant's confidence and therefore would be withdrawing as counsel.

[5] Soon after, in early October 2010 the Applicant filed a complaint with the New Zealand Law Society (NZLS) Complaints Service. He did so with the assistance of staff of the Multicultural Council of the town in Australia where he was studying. His complaint was summed up in the following terms:

> We believe that [the Practitioner's] conduct has been misleading on several fronts and that his work performance and decisions were not in the best interests of our case.

[6] He went on to allege that when the adoption matter was first discussed, the Practitioner was "confident that [the] application would be successful" and by implication, that the Practitioner provided a firm estimate of the costs. The Applicant also claimed that he informed the Practitioner that he and his family "were relocating to Australia due to work/study reasons" and that the Practitioner "was supportive of this and informed us this would not disadvantage the progress of the application".

[7] In his response, the Practitioner outlined the practical and legal difficulties arising from the niece living in Pakistan and the consequences of the Applicant moving to Australia. He stated that in March 2010 the Applicant and a friend attended at his office "to advise that he was going to Australia on business for three-four months". He recalled that he indicated that a short absence would not cause a difficulty but that the Applicant would be required to return to New Zealand for a hearing. He then referred to finding out that the family had moved to Australia so that the Applicant could complete a doctorate, and concluded on this point that, had he been told that the family was relocating for three to four years "with no certainty of return to New Zealand", then probably he would have reconsidered the situation with the application.

[8] He concluded his response by denying he had expressed certainty of success, denied the final costs were ever fixed, and stated that he was never supportive of the relocation to Australia because the issue was never discussed with him. He provided copies of letters supporting his recollection regarding the likelihood of success and the costs issue.

[9] Another complaint that the Practitioner had failed to release documents as requested by the Applicant was subsequently made. The Practitioner advised that he had never received a request for the documents but that they were available for release either by payment of his fee or payment of photocopying costs "in accordance with the Privacy Commissioner's rulings in this regard", copies of which were sent to the NZLS.

Standards Committee Determination

[10] The Standards Committee's decision, dated 26 May 2011, thoroughly considered each and every complaint made by the Applicant. The submissions received from the parties are set out in considerable detail. On the issue of the fees charged, the Committee had the Practitioner's computerised time records which detailed the work carried out and the time spent. Because the work undertaken by the Practitioner for the Applicant was partly undertaken before the Lawyers and Conveyancers Act 2006 came into force, the review of the fees charged was covered by different criteria, depending on when the work was carried out. The Committee's decision was effectively the same: it considered the fees to be fair and reasonable for the work done.

[11] The Committee accepted the Practitioner's explanation for the decision to cease acting on the Applicant's behalf and found no problem with his standard of representation. In addition, its decision on the alleged failure to release documents was not critical of the Practitioner. For all the reasons set out in its lengthy decision, very briefly summarised above, the Standards Committee dismissed the complaints against the Practitioner.

Application for Review

[12] The formal application for review was accompanied by a statement of the Applicant's Australian social worker and a letter from the Applicant and his wife. The outcome sought is to have the balance of fees (in the sum of $3,150) waived.

[13] The reasons provided for the application include (in summary) the Practitioner's alleged failure to adequately communicate with the Applicant, that no feedback was provided about his decision to leave New Zealand to study in Australia and the implications of the move on the adoption application. The social worker's letter repeats the position of the Applicant and his allegations, in particular, that the Practitioner was aware of the plans to spend three-four years in Australia but had never expressed concern that the move would disadvantage the Applicant's case. The themes in the social worker's letter are elaborated upon in the Applicant's accompanying letter, with

more associated allegations, for example, that the Practitioner was "failing to keep [them] informed", and generally set out the implications of the matter not proceeding.

Review

[14] It is the task of the Legal Complaints Review Office to review decisions of Standards Committees. The review includes consideration of how the Standards Committee dealt with the complaint and whether its decision is soundly based on the evidence and submissions before the Committee. It recognises that Standards Committees are made up of experienced lawyers, together with a non-legally qualified representative of the community.

[15] In this case the Standards Committee dealt with the identified issues, setting out the facts and submissions, and the relevant law which applied. This was more complicated than usual because the law setting out the duties of legal practitioners in New Zealand changed part way through the time period covered by the Applicant's complaint. The Standards Committee carefully considered all the complaints and came to the view that nowhere did the Practitioner breach his professional obligations.

[16] All material before me has been carefully read. It is noted that in the Practitioner's first letter, dated 23 November 2007, the Practitioner states that "as a very rough estimate, this application could cost $2,000 to $2,500, although there is no way of knowing with any certainty what will emerge as the case develops" (emphasis added). That careful statement alone, together with the Practitioner's careful setting out of the detailed procedures needing to be followed, should make it clear to any reader that the "very rough estimate" could not be relied upon as a firm quote as to the final cost.

[17] The tone of the letter dated 23 November 2007 suggests that the process of bringing the then teenage niece to New Zealand would not have a guaranteed outcome, and indeed the tone of later correspondence confirms this impression. There is nothing in the papers to show that the Practitioner was "confident that [the] application would be successful".

[18] What seems to have significantly undermined the prospects of success was the Applicant's move to Australia for three-four years of study. The Applicant believed that he told the Practitioner of the move, but the Practitioner is adamant that he was informed that the Applicant would be in Australia for three-four months. It seems both parties agree that the issue was raised in March 2010. I note that on 15 April 2010, the Practitioner wrote to the Applicant (about costs) to an Auckland address. One might

think he was unlikely to do that if he knew that the Applicant and family had or were moving to Australia.

[19] During an exchange of emails on 10 May 2010, the Practitioner asked (among other things) when the Applicant would be back in New Zealand and for how long, and in a further email on the same day he posed a number of questions, including the name of the university, the length of the course, details of his accommodation and financial situation, including the support of his family and his niece whose adoption was the subject of the application. His final question related to the certainty that the Applicant would return to New Zealand at the end of his studies.

[20] One is left with the strong impression that the Practitioner was not aware of the fact that the family was moving to Australia for three-four years and therefore the allegation that the Practitioner was "supportive" of the move and allegedly informed the Applicant that such a relocation "would not disadvantage the progress of the application" is not credible.

[21] I conclude that the decision of the Standards Committee in all respects is amply justified on the facts of the matter and there is nothing in its determination or indeed the factual situation leading to the complaint which would lead me to disagree with the Standards Committee's findings. Having considered all the material on the file and applied the relevant legal principles, I have found no reason to take a different view from that of the Standards Committee.

Decision

[22] Pursuant to Section 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Auckland Standards Committee 4 is confirmed.

DATED this 17th day of April 2012

_____

Hanneke Bouchier
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:

IO as the Applicant
JI as the Applicant's representative
AU as the Respondent
Auckland Standards Committee 4
The New Zealand Law Society