

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee

BETWEEN

AZ

Applicant

AND

RJ AND YK

Respondents

DECISION

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

Introduction

[1] Ms AZ has applied for a review of a decision by the [Area] Standards Committee dated 17 May 2016. The Committee decided further action on Ms AZ's complaint in respect of Ms RJ and Ms YK was not necessary or appropriate, and recorded its reasons for that decision.

Review

[2] The parties consented to this review being determined in their absence pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[3] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or 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. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[4] More recently, the High Court has described a review by this Office in the following way:²

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO’s own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee’s determination.

[5] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee’s determination, has been to consider all of the available material afresh, including the Committee’s decision; and form an independent opinion based on those materials.

Reasons

[6] Fundamentally, the complaint misconceives the relationship between Ms AZ and the lawyers about whom she complains. As the Committee says, the lawyers owed Ms AZ only limited obligations, none of which have been contravened. After reviewing the complaint and the application for review, neither discloses any professional conduct issue for either of the lawyers concerned, Ms YK in particular. There is no reason to take a different view from that formed by the Committee.

[7] As the complaint raises no professional conduct issue and the application for review does not disclose any deficiency in the Committee’s decision, further action is neither necessary nor appropriate.

² *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[8] In the circumstances, the decision is confirmed.

Decision

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

DATED this 31st day of October 2017

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 AZ as the Applicant
Ms RJ as Respondent
Ms YK as Respondent
[Area] Bay Standards Committee
The New Zealand Law Society
Secretary for Justice