

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

JF
Of Christchurch
Applicant

AND

RT
of Auckland
Respondent

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

DECISION

[1] In May 2011, the Standards Committee issued a decision declining to take any further action on the complaints made by Mrs FJ (the Applicant) against Mr RT (the Practitioner).

[2] The reason was that the Standards Committee perceived that the complaints included in the Applicant's letters of complaint were essentially the same as those included in her previous complaints to the Auckland District Law Society, these complaints having been considered and disposed of.

[3] Accordingly, the Committee considered it had no jurisdiction to consider those complaints pursuant to section 351(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[4] The Applicant rejected this outcome and was of the view that the Standards Committee had neither identified, nor dealt with, the additional complaints raised in her 2011 letters. She sought a review of the Committee's decision.

Review application

[5] The Applicant considered that the substantive elements of the complaint had been ignored and minimised by the Standards Committee, and that there had been no rigorous enquiry.

[6] *Prior review:* The file came under the responsibility of Deputy Legal Complaints Review Officer Owen Vaughan who, having assessed the file and the review application, considered that the complaints against the Practitioner were the same as those earlier dealt with by a Complaints Committee, and there was no basis on which the decision of the Standards Committee could be disturbed. With reference to section 205 of the Act, he did not consider it necessary to undertake any further enquiry, and accordingly confirmed the Standards Committee's decision.

[7] Thereafter, the Applicant contacted our office again with complaints about breach of natural justice, particularly in relation to the refusal to undertake any further investigation. In short, she considered she was entitled to an enquiry and to have a "proper review".

[8] *Decision recalled:* The complaint was referred to me and I reviewed the procedures of our office, and noted that there had been in inadvertent oversight insofar as that the Applicant had not been offered an opportunity to be personally heard in relation to her review application. For that reason it was appropriate to recall the earlier decision and start the review process anew.

[9] *Restarting the review process:* The Applicant was informed that I had assumed the responsibility for conducting the review. Arrangements were made for a review hearing and the Applicant was informed that a hearing would be an Applicant-only hearing as a first step.

[10] The Applicant wrote several further letters to our office complaining about the Applicant-only procedure. She demanded that the Practitioner should be required to personally respond to the complaint that she had made against him. As it appeared that she did not have a full understanding of the procedures involved in the disciplinary processes, she was informed that the scheduled review hearing would provide an opportunity to discuss any matters of concern to

her, and would not prevent the LCRO to take any further steps as shown to be necessary as a result of the review hearing.

[11] Further correspondence from the Applicant followed, which had two main themes: the first, insisting that LCRO Mr Vaughan respond to a number of personal accusations; the second that the Practitioner respond to certain matters in a manner that she demanded. I record at this point that the tone and content of the Applicant's letters were extremely rude and offensive, levelling unsupported and speculative allegations of a personal nature against officers of this Tribunal.

[12] The Legal Complaints Review Officer has the power to direct the proceedings in such manner as he or she thinks fit (Section 206(5)) and the Applicant was repeatedly informed that all matters pertinent to her review and her concerns could be discussed at the review hearing.

[13] I further record that despite having received many communications from this office with explanations about our processes, the Applicant continued with her barrage of correspondence to my office, demanding that certain procedures be followed in relation to the LCRO investigation, and was on every occasion reminded that the next step would be determined by the outcome of the review hearing. Her responses might properly be described as rude and offensive and entirely inappropriate.

[14] *Non-attendance by Applicant.* The review hearing was arranged in Christchurch on 3 February, but the Applicant did not appear. Efforts were made to locate her by telephone, fax and email (the latter two being her preferred modes of contact). Her further contact with this office was some five days later, at which time she repeated her earlier objections.

[15] I am satisfied that the Applicant had had every opportunity to have presented her case to this office, and that she has declined to participate in the review process in a manner provided for the Lawyers and Conveyancers Act 2006.

[16] I therefore have proceeded to conduct this review on the basis of all of the information in the Standards Committee files and the review application. Regardless of my observations about the Applicant's conduct, this has not affected my review of the Committee's decision.

Review

[17] On 26 May 2011, the Standards Committee issued a decision stating that the issues raised by the Complainant in her various letters were essentially the same as those raised by her in previous complaints to the Auckland District Law Society, these complaints having been considered and disposed of at that time, and accordingly the Standards Committee had no jurisdiction to consider the matter further. The Standards Committee's decision to take no further action was based on the view that the complaints had been dealt with previously. The Applicant disagreed that was the case.

[18] For this review that NZLS provided copies of the Standards Committee file, and also the file of the Auckland District Law Society which had considered previous complaints made by the Applicant in 2008.

[19] The Applicant's recent complaints to the New Zealand Law Society are contained in two letters dated 24 January 2011 and 28 February 2011. These letters refer to many and various complaints against both the Practitioner and another lawyer. The main focus of the complaints concerned an allegation that the Practitioner had intentionally withheld from her information about a \$20,000 legacy left to her by her sister's Will. It is fair to say that this complaint dominated the Applicant recent correspondence to the Standards Committee.

[20] This was identical to a complaint previously been considered by the Complaints Committee of the Auckland District Law Society which issued a decision in July 2008.

[21] Section 351(2) of the Lawyers and Conveyancers Act 2006 prohibits a Standards Committee considering any complaint that has been disposed of. This precluded any further consideration of the matter, and in my view the Standards Committee was right to have declined to reconsider this complaint.

[22] The Applicant clearly remains dissatisfied with the outcome of that complaint. I noted from the file that she had been informed of her right to have the decision reviewed by a Lay Observer, but there is no indication that she took any steps to seek a review. In the circumstances of her obvious ongoing dissatisfaction with the way that her earlier complaint was dealt with, I have

accepted her review application as equivalent to an application for review by a Lay Observer, this being her only remedy within the disciplinary framework. There is no time limit for seeking a review. Accordingly I undertook a review of the Complaints Committee decision and have issued a Lay Observer report under separate cover.

New complaints:

[23] The Applicant's correspondence of January and February 2011 also raised new heads of complaint. I accept that these were new complaints, notwithstanding that they appear to have arisen from the earlier complaints that have been disposed of, and accordingly ought to have been identified in that way by the Standards Committee.

[24] The January letter complained that the Practitioner refused to tell her the whereabouts of her sister's ashes. The Applicant referred to her sister's will having provided for a grave but instead the sister's ashes had been thrown into "tough terrain wasteland" and with no memorial. She sought accounting for the money for the grave. The Applicant further alleged that the Practitioner had mismanaged and cheated her sister's family trust.

[25] The February 2011 letter, referred to as an addendum to the earlier letter, complained that the Practitioner had refused to pass on her phone number to her brother, which she considered scandalous against the background of the disaster of the Christchurch earthquake.

[26] I reviewed all of the information on the file to see whether any further enquiry was necessary, bearing in mind that it is in within the discretion of the LCRO to make further enquiry as considered necessary. I noted that the Applicant had been requested by the Complaints Service to provide further information to support the complaints and that she did not forward any additional evidence. Nor did the Applicant appear for the review hearing, which was a further opportunity to present such additional information as she wished to have considered.

[27] There appeared sufficient information on the file to deal with the review, and I have therefore conducted this review on the basis of the information contained in the Standards Committee's recent file and the file pertaining to the previous Complaints Committee enquiry, and information included in the Applicant's correspondence to this office.

[28] The Practitioner had explained that his only involvement with the Estate of the Applicant's sister was to obtain probate and to do the conveyancing when the sister's house was sold. In all other respects the Practitioner had informed the Complaints Committee that the Estate assets and distributions were controlled by the executors of the Estate, the brother and his wife. That this was the case was confirmed in a statement of the Executors.

[29] The Complaints Committee had accepted that the Practitioner had very limited involvement in the administration of the sister's Estate. There is nothing to show otherwise in any of the information on the files. In particular there is nothing to show that the Practitioner had any involvement in the scattering of the deceased sister's ashes, or that he knew the whereabouts of the ashes. This is a matter known to the Executors.

[30] In relation to the allegation relating to mismanagement of the funds of the deceased sister's Family Trust, there is nothing to show that the Practitioner had any involvement of any kind whatsoever in the Trust. He was neither a Trustee nor provided professional services. Enquiries should be made of the Trustees.

[31] The Applicant was never a client of the Practitioner, and he had no professional obligations towards her in complying with her request to pass on her phone number to a third person. It may well be the case that the Practitioner and his staff were unwilling to take any steps to contact the brother as she had asked but in the context of the Applicant's accusations of dishonesty and general insulting communications to the Practitioner this can hardly be considered surprising. The Practitioner's refusal to accommodate a request by a person to whom no legal duty is owed cannot raise disciplinary issues.

[32] None of the three new issues arising in the Applicant's 2011 correspondence requires any further investigation or enquiry.

[33] In summary, I accept that the 2011 complaints raised new issues, but it is my view that there was no further action required on the part of the Standards Committee. It would have been helpful had the Committee explained their decision in those terms, but there is no basis for changing the Standards Committee decision to take no further action on the complaints.

Costs

[34] The fact that the Applicant failed to attend the review hearing and has given no explanation, it is appropriate that consideration be given to whether a costs order should be made against her.

[35] Section 210 of the Act empowers the LCRO to make such order for payment of costs and expenses as the LCRO thinks fit. This is a wide discretionary power and permits a costs order to be made against any party to a review hearing.

[36] This office has incurred considerable unnecessary expense in scheduling a review hearing that the Applicant did not attend. While the Lawyers and Conveyancers Act is intended to protect the interests of consumers, there is an expectation that any party who seeks to use the complaints service or the review processes, will participate in that process in a reasonable way.

[37] The Applicant was given ample opportunity to attend a review hearing and be heard on her matters of concern and present any additional information. It was at her request that further steps be taken to consider her complaints. Her non-attendance may have been due to her displeasure that her demands were not met, but a review applicant is not entitled to dictate procedures and each of her letters was responded to with a courteous reply and explanation.

[38] The manner of the Applicant's engagement with this office has been entirely inappropriate and wasteful of the resources of this office. The disciplinary machinery is funded by a levy imposed on all practising lawyers and it is expected that this resource will be used for its intended purpose, and that those who wish to avail themselves will engage in the review process, and with courtesy and respect.

[39] While only rarely would consideration be given to imposing a costs order on a lay participant, I consider it appropriate to do so in this case. The Applicant will be required to make a contribution to the costs that have been wastefully incurred by this office in progressing her review application.

[40] I have no information about her financial means, but in the overall circumstances I consider a modest contribution in the sum of \$75 is appropriate. This sum should be paid to the New Zealand Law Society.

Decision

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

Orders

Pursuant to section 210 of the Act the Applicant is ordered to pay the sum of \$75 to the New Zealand Law Society within two calendar months of the date of this decision.

DATED this 16th day of February 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:

JF as the Applicant
RT as the Respondent
The Auckland Standards Committee 4
The New Zealand Law Society