

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 1

BETWEEN

MR SALTCOATES

of Auckland

Applicant

AND

MR BALFOUR

of Auckland

Respondent

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

DECISION

[1] An application was made by Mr Saltcoates (the applicant) for a review of a determination by the Standards Committee in respect of his complaint against Mr Balfour (the practitioner). A review hearing was arranged and attended by the applicant and the practitioner who was accompanied by his counsel, Ms X.

[2] The application for review was made because the Auckland Standards Committee 1 had declined jurisdiction to consider the applicant's complaint. The Committee referred to section 351(2) of the Lawyers and Conveyancers Act 2006 which prohibits any person making a complaint under this Act in respect of a complaint that has been disposed of under the Law Practitioners Act. The Committee concluded that the applicant had made substantially the same complaint in April 2008 which had been considered by the Complaints Committee of the Auckland District Law Society under the Law Practitioners Act 1982 and decided on 12 November 2008.

[3] The review application had not addressed the matter of jurisdiction in respect of section 351(2) of the Lawyers and Conveyancers Act. At the review hearing the basis of the Standards Committee determination was explained to the applicant with reference to the statutory provisions. He was invited to respond to the issue of jurisdiction in those circumstances, but made no submissions in relation to challenging the reasons for the determination of the Committee.

[4] The Standards Committee forwarded a copy of the file relating to the original complaint. The complaint had been made in April 2008, and following enquiry a decision had been made in November 2008. At the time the complaint was filed the law governing complaints against lawyers was the Law Practitioners Act 1982. Meanwhile there was a change in the law governing lawyers, and the Lawyers and Conveyancers Act 2006 commenced on 1 August 2008, and the Law Practitioners Act was then repealed. However, enquiries into current complaints were unaffected by this change, and continued to be processed under the law which applied at the time the complaint was made.

[5] It was clear from the information that the complaint made by the applicant was substantially the same as a complaint that had previously been considered, that a decision had been made on the complaint under the Law Practitioners Act. Under that Act a complainant had the right to seek a review of a decision made by a District Law Complaints Committee. Such reviews were undertaken by Lay Observers whose powers and functions were set out in section 97 of the Act. The role of the Lay Observer has, since February of this year, been assumed by the Legal Complaints Review Officer. In conducting such a review the Legal Complaints Review Officer exercises the same powers as were exercisable by the Lay Observer.

[6] In this case the applicant explained after receiving the decision of the District Law Society his dissatisfaction led him to write to the Minister of Justice, and that the Minister had referred him to the complaints procedures under the Lawyers and Conveyancers Act. A copy of his letter (May 2009) and the Minister's response (June 2009) were provided and supported his explanation, although it was noted that the applicant had written to the Minister some 6 months after he had received the Complaints Committee's decision. Nevertheless it indicates that the applicant took steps to challenge it. He said he had not been aware of a right to a review of a decision by a Lay Observer. There was no clear indication from the original file that such information had been given to him. The applicant did not dispute that the recent complaint was the same as his earlier complaint and stated that he had followed the course of action suggested to him.

[7] It may possibly be the case that the applicant has an existing right of review under the Law Practitioners Act 1982 in relation to the original decision of the District Law Society. Should he decide to pursue this further it is open to him to seek a review by writing directly to this office at which time the matter could be considered further. Any such review application would also need to include reasons for the application with reference to the parameters of such a review.

[8] For the sake of completeness, I must address one last matter. The applicant included what he described as a new complaint in his appeal application. He alleged that the practitioner had not provided him with information he had requested by two letters. Copies of these letters were provided, and were dated 23 October 2007 and 12 December 2007. The first sought copies of particular information relating to work that had been done by the practitioner; the second sought a response from the practitioner in relation to complaints. The practitioner said that there was no information that had not been provided to the applicant either in the course of the work that he had undertaken or the original District Law Society enquiry. The letters predated the original complaint and the applicant did not identify what information he had not been provided with since that time. In any event this complaint had been included in his original complaint. Furthermore, the review process is confined to a review of a determination of the Standards Committee on complaints that had been investigated. The review process cannot consider a fresh complaint.

[9] There is clear evidence that the complaint is barred by statute. For that reason this review application must be declined.

Decision

Pursuant to section 211(a) of the Lawyers and Conveyancers Act, and for the reasons given above, the determination of the Standards Committee is confirmed.

DATED this 3rd day of December 2009

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:

Mr Saltcoates as Applicant

Mr Balfour as Respondent
The Auckland Standards Committee 1
The New Zealand Law Society