

**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**

**GC**

Applicant

**AND**

**TP**

Respondent

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

**DECISION**

**Introduction**

[1] Mr GC has applied for a review of the determination by [City] Standards Committee X to take no further action in respect of his complaints against Mr TP.

**Background**

[2] Mr GC is one of three trustees of the X Trust (the Trust). For reasons which are not relevant to this review there is discord and a lack of communication between Mr GC and the other two trustees.

[3] In his complaint Mr GC says “there is no communication between myself and the other two trustees”.<sup>1</sup>

[4] The discord and lack of communication between the trustees had caused difficulties in the proper administration of the Trust.

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<sup>1</sup> Letter from GC to NZLS (19 May 2014).

- [5] Mr TP received instructions from Mr GC's two co-trustees.
- [6] Mr GC sought information concerning the trust from Mr TP including:
- (a) Details of Mr TP's costs in relation to an easement granted by the trust to Company A;
  - (b) Advice as to how the payment to be made by Company A to the Trust for the grant of the easement would be applied;
  - (c) A report from Mr TP about a number of matters relating to the easement connected with the Trust.
- [7] Mr GC does not consider that Mr TP has experience in Maori land issues and because of the lack of information, Mr GC is concerned that he will be unable to fulfil his obligations and duties as a trustee.
- [8] In his complaint Mr GC requested that Mr TP be directed to provide the information he seeks.

### **The Standards Committee determination**

- [9] The Standards Committee determination included the following statements:<sup>2</sup>

Mr TP acts for two of the three trustees of the Trust; Mr GC has his own lawyer.

Mr TP's principal duties are therefore owed to his clients, not to Mr GC as a third party ...

The Standards Committee can find nothing in the complaint to indicate that Mr TP is acting other than in accordance with instructions received from his clients. Nor does the complaint indicate that Mr TP has delayed responding to Mr GC or his lawyer and therefore shown them a lack of respect and courtesy.

- [10] The Committee determined to take no further action in respect of Mr GC's complaints.

### **Nature and scope of review**

- [11] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>3</sup>

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<sup>2</sup> Standards Committee determination (10 June 2014) at [3] and [7]–[8].

... 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.

[12] More recently, the High Court has described a review by this Office in the following way:<sup>4</sup>

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.

## **Review**

[13] A review hearing took place on 19 April 2017 with Mr GC in Rotorua. Mr TP was not required to attend and did not exercise his right to do so. The hearing was conducted by Mr Vaughan acting as a delegate duly appointed pursuant to clause 6 of Schedule 3 of the Lawyers and Conveyancers Act 2006 (the Act). The final determination of the outcome of this review as set out in this decision is made following a full consideration of all matters by myself following discussion with Mr Vaughan.

[14] Mr TP was instructed by Mr GC’s two co-trustees. In his letter of complaint on 19 May 2014, Mr GC says: “I was excluded from his appointment, he is acting on their behalf only.” I also add the statement made by Mr GC in his letter of complaint: “There is no communication between myself and the other two trustees.” In his letter to this Office (24 July 2014) Mr TP refers to s 227(1). There is no evidence that this provision has been negated by any trust order as referred to in that subsection.

[15] Section 227(1) of the Te Ture Whenua Maori Act 1993 provides that:

<sup>3</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

<sup>4</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Subject to any express provision in the trust order and except as provided in subsections (2) and (3), in any case where there are 3 or more responsible trustees of a trust constituted under this Part, a majority of the trustees shall have sufficient authority to exercise any powers conferred on the trustees.

Inasmuch as Mr TP's two clients instruct him to take steps on behalf of the Trust, Mr TP is obliged to do so. That does not however alter the fact Mr TP is acting only for Mr GC's two co-trustees. He does not act for Mr GC.

[16] Some actions on behalf of the Trust require a signature from Mr GC. The easement grant was delivered to Mr GC by one of his two co-trustees to be signed by him.

[17] Mr GC is obliged to fulfil his fiduciary duties as a trustee of the Trust and must understand what it is he signs. In addition, Mr GC has a duty to ensure the Trust is properly administered. To enable him to fulfil these obligations he must be fully informed of all matters relating to the Trust. Mr GC's co-trustees have the same duties.

[18] The Maori Land Court has "all the same powers and authorities as the High Court (whether by statute or any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally".<sup>5</sup> The jurisdiction of the High Court is preserved by s 237(2) of the Act.

[19] Where a trustee is unable to fulfil his obligations because of the conduct of his co-trustees he has the ability to apply to the Court for appropriate direction or orders. That option is open to Mr GC.

[20] Section 138(1)(f) of the Act provides that a Standards Committee may decide to take no further action in respect of a complaint if:

there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the person aggrieved to exercise.

[21] I concur with the determination of the Standards Committee that Mr TP does not act for Mr GC and consequently Mr TP has no duty to Mr GC. Mr TP acts for Mr GC's two co-trustees. Where those two trustees instruct Mr TP to carry out certain matters for the Trust he must comply with those instructions. In addition, he can act only in accordance with their instructions. If they decline to authorise him to provide whatever Mr GC requests, he cannot do so.

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<sup>5</sup> Te Ture Whenua Maori Act 1993, s 237(1).

[22] Mr GC must take whatever action he considers necessary to ensure his co-trustees comply with their fiduciary duties.

**Decision**

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the determination of the Standards Committee is confirmed but is also modified to include the provision of s 138(1)(f) of the Act as reason for the determination to take no further action in respect of Mr GC's complaints.

**DATED** this 10<sup>th</sup> day of May 2017

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**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:

Mr GC as the Applicant  
Mr TP as the Respondent  
[City] Standards Committee X  
The New Zealand Law Society