

CONCERNING

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

AND

CONCERNING

a determination of the Wellington Standards Committee 1

BETWEEN

LW

Applicant

AND

VI

Respondent

DECISION

Introduction

[1] This is an application for review by LW against a determination of the Standards Committee to publish his name following an earlier finding against him of unsatisfactory conduct. The result of this review is that the determination of the Committee is confirmed but modified to include publication of the details of the first determination.

Background

[2] VI was involved in an altercation at a service station and was charged with a criminal offence. He instructed LW to represent him in defending the charge but was convicted.

[3] Following VI's complaint to the Complaints Service of the New Zealand Law Society, the Standards Committee made a finding that LW's conduct in representing VI constituted unsatisfactory conduct. He was fined \$1,000 and was ordered to take

advice in relation to the management of his practice at his own expense. In addition, he was ordered to pay costs of \$1,000 to the New Zealand Law Society.

[4] The Committee sought submissions from the parties as to publication of its determination and LW's name. VI filed submissions – LW did not.

[5] In its determination dated 31 May 2011, the Committee determined pursuant to section 142(2) of the Lawyers and Conveyancers Act 2006 to publish LW's name in *Law Talk* and on the New Zealand Law Society website such publication to include LW's name but not VI's name or any details that might identify him.

[6] LW has applied for a review of that determination.

Review

[7] LW requested to appear in support of his application and a review hearing was held in Wellington on 31 May 2012. LW was accompanied by LX, the consultant from whom LW was directed by the Standards Committee to obtain advice with regard to the management of his practice.

[8] At the outset of the hearing, I provided LW with a copy of VI's email dated 17 January 2012 to this Office which had not previously been provided to him. I advised that LW had a period of one week from the date of the hearing to provide any comments on that email. No comments have been received from him.

LW's submissions

[9] The Standards Committee invited both VI and LW to provide submissions with regard to the issue of publication but none were received from LW. It would seem that it was only following the determination by the Committee to order publication of LW's name that he has been prompted to belatedly take some action in his own defence. The scope of a review by this Office enables LW to have his submissions considered, but these are submissions which should have been before the Standards Committee.

[10] LW advises that he has been in practice for [many] years. His practice is primarily conveyancing based, but he has been undertaking criminal briefs since 1982. He advised that at the time of his instructions by VI, he was approved by the Legal Services Agency to undertake criminal jury trials.

[11] His practice is conducted in conjunction with others under the name of AEB and he himself employs a staff solicitor and a support person. At the review hearing, he advised that he intended to [leave the legal profession] and is no longer undertaking legal aid assignments. He confirms, however, that he still acts for persons facing criminal charges who are not in receipt of legal aid.

[12] LW made the following submissions in support of his contention that his name should not be published:

- a) that in [many] years' practice, he has not previously been the subject of any complaint;
- b) that publication would detrimentally AEB Law; and
- c) that publication would detrimentally affect his family and his reputation.

[13] While it is acknowledged that the LCRO Guidelines and those followed by the Standards Committee do take note of whether the practitioner has been the subject of any previous complaints, it must be borne in mind that it is only since 2008 that the "consumer protection" element of the disciplinary process has been in place. Prior to this, the disciplinary machinery of the Law Society had, as its benchmarks, standards considered to be appropriate by other lawyers. The definition of unsatisfactory conduct in section 12 of the Lawyers and Conveyancers Act focuses on the standards expected by a member of the public of a reasonably competent lawyer. Consequently, the weight to attach to the previous disciplinary history of a practitioner when considering publication is limited.

[14] Any publication would refer to LW's name only. It would not therefore directly affect his staff or those practising in conjunction with him. It is acknowledged that there may be some impact where it is known that the person is either employed by LW or practises in conjunction with him in AEB. However, those persons do not thereby become imputed with LW's conduct and there would be limited if any adverse consequences arising from this.

[15] The effect on LW's reputation is also acknowledged. However, LW has noted that he has many satisfied clients and as the facts of the case will also be published, it will be recognised that the unsatisfactory conduct arose in the course of representing VI in a criminal matter. Those who wish to instruct LW to represent them on other matters may not have any concerns.

[16] The effect of publication on LW's family is difficult to assess as he did not provide, nor did I seek, any further information in this regard.

LX's submissions

[17] LX has been providing management advice to LW as directed by the Standards Committee since late September 2011. He has been providing advice and assistance to LW in the management of his practice and helping him to develop systems to enable him to properly manage his files. He attends LW's office weekly.

[18] LX submitted that, with his assistance, LW has taken steps to ensure that similar events which occurred with regard to VI's matter will not occur again. He noted that LW had made only the one mistake in his career and that it was somewhat harsh that his name should be published.

[19] LX is advising LW in the management of his practice. That will address the aspects of the Standards Committee determination which relates to responding to correspondence and general administrative systems. However, one aspect of VI's complaint was that LW did not subpoena witnesses. It is by no means clear that his failure to do so arose from mismanagement and organisational shortcomings. LW advised that having spoken to the potential witness, he formed the view that the witness' evidence would not have been helpful. That is not a matter which LX's advice will remedy.

[20] The Standards Committee found that LW failed to act competently, that there were no notes or records on his file, and that LW had failed to follow clear instructions. His presentation to the LCRO hearing was hesitant and was not presented with any conviction or order. He did not provide any written submissions, despite this application for review being brought by him. These are not matters which LX's advice can improve.

Publication

[21] Section 206(1) of the Lawyers and Conveyancers Act establishes that every review conducted by this Office must be conducted in private.

[22] To publish details of a review in which the parties are identified therefore requires a specific order providing for this. This is in contrast to the provisions of the Act relating

to the proceedings of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, which provides that proceedings of the Tribunal are to be held in public.¹ Consequently, the principles applied by the Tribunal relate to suppression, whereas the LCRO must determine that the reasons for publication of the identities of the parties outweigh the presumption of privacy.

[23] The LCRO publication guidelines identify the factors that will be taken into account when considering whether it is in the public interest to publish a decision with identifying details. These are:

- (a) the extent to which publication would provide protection to the public including consumers of legal and conveyancing services;
- (b) the extent to which publication will enhance public confidence in the provision of legal and conveyancing services;
- (c) the impact of publication on the interests and privacy of –
 - (i) the complainant;
 - (ii) the practitioner;
 - (iii) any other person;
- (d) the seriousness of any professional breaches; and
- (e) whether the practitioner has previously been found to have breached professional standards.

[24] Section 206(4) of the Act identifies that the primary issue for the LCRO must be whether publication is necessary or desirable in the public interest.

[25] The Standards Committee has found that LW's representation of VI in this matter was conduct which fell short of the level of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.²

[26] Representation of clients in criminal proceedings is an extremely important role for a solicitor to undertake. The consequences of inadequate representation will have

¹ Section 238(1), Lawyers and Conveyancers Act 2006.

² Section 12(a), Lawyers and Conveyancers Act 2006.

a detrimental effect on the client. As VI has discovered, the existence of a criminal conviction has a severe impact on many aspects of a client's life.

[27] Consequently, where a practitioner's conduct has been found to be wanting in this area, it is extremely important that this be communicated to the public so they can make an informed choice as to who is to represent them in criminal proceedings.

[28] Section 3(1)(a) provides that one of the purposes of the Lawyers and Conveyancers Act is "to maintain public confidence in the provision of legal services...". A Standards Committee would be failing in its duty if it did not provide the public with a means of knowing that LW's representation in this instance has been found wanting and, as VI has said, enabling persons needing representation to make an informed choice.

[29] I therefore come to the view that publication of the facts of this case, and LW's name, is necessary and desirable in the public interest. Public interest outweighs all of the other factors advanced by LW in support of his application.

Outcome

[30] The determination of the Standards Committee refers only to the publication of LW's name. In the Standards Committee determination relating to findings, it sought submissions from the parties on the publication of its determination and LW's name. To remove any uncertainty, the determination of the Standards Committee is modified to include publication of the facts of the case, removing all identifying details other than LW's name.

Decision

Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee is confirmed but modified as set out in the preceding paragraph.

DATED this 8th day of June 2012

O W J Vaughan
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:

LW as the Applicant
VI as the Respondent
The Wellington Standards Committee 1
The New Zealand Law Society
Secretary for Justice (Redacted)