

LCRO 16/2014

CONCERNING

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

AND

CONCERNING

a determination of Area Standards Committee X

BETWEEN

YC

Applicant

AND

TX

Respondent

DECISION

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

Introduction

[1] Mr YC has applied for a review of the determination by Area Standards Committee X to take no further action in respect of his complaints about Mr TX.

Background

[2] Mr YC's father died on 27 January 2008. Mr YC was appointed executor of his will and Probate of the will was granted on 12 October 2009.

[3] A statement of Assets and Liabilities prepared by Mr TX on 15 January 2010 shows the net balance of the estate to be \$XX while Judge X in Family Court proceedings noted that "in general terms it is submitted that the estate presently has a value of approximately \$XXX made up of cash and property".¹ Mr YC disputed this assessment of the value of the estate.

¹ *MAP v RFP* [2012] NZFC 685 at [21].

[4] The will provided for the sum of \$25,000 to be paid to Mr YC's brother (CJ) and the balance of the estate was to pass to Mr YC.

[5] Following Mr YC (senior's) death a person not named in the will applied for and was granted a declaration of paternity. Family Protection claims followed, resulting in CJ being awarded a further \$225,000 from the estate while the newly discovered brother (PB) was awarded the sum of \$250,000.

[6] Pending the outcome of the proceedings Mr YC had been required to pay the sum of \$200,000, which had become intermingled with his own funds, to Mr TX, to be held as part of the estate assets and Mr TX undertook to the Court not to make any distribution of the estate assets.

[7] When the Court issued its judgment Mr TX distributed the estate in accordance with the orders made.

Mr YC's complaints

[8] Mr YC made various allegations about Mr TX in his complaint to the Lawyers Complaints Service including:

- (a) malfeasance;
- (b) illegal transactions;
- (c) unlawful seizure of non-estate property — obligation of lawyer/trustee not to act illegally;
- (d) obtaining by deception or causing loss by deception; and
- (e) illegal estate distribution

He disputed the findings of the court in the paternity and Family Protection proceedings, terming them "illegal orders" in his letter of complaint dated 16 October 2013.

[9] Mr YC's complaints are replete with rhetorical questions beginning with the words: "Is it not the case ...".

[10] In the section of the Complaint Form where a complainant is required to identify the outcomes sought, Mr YC said:

6.1 Is it not the case that I signed an "irrevocable undertaking" made on 2 October 2009, and is it not true no lawful impediment or reason exists why my

Trustee should not comply with the Sealed Order of the Court I was granted just 10 days later, (refer exhibit "Q") being a Contract under Seal, Signed Sealed and Delivered on 12 October 2009

7.1 I seek the maximum allowable compensation under the Law Society Rules for the 5 years of harassment and being compelled to provide \$200,000.00 administration or bond in contravention of statute and seizure of \$79,734.25 being my personal funds accidentally captured and then seized by [Law Firm] during the appropriation of the ESTATE OF BC.

The Standards Committee determination

[11] The Lawyers Complaints Service processed the complaint through its Early Resolution Process with the result that Mr TX did not provide any substantive response to the complaint.

[12] The Committee noted the difficulties in discerning Mr YC's complaints and determined to take no further action. It reasoned:²

The extensive judicial scrutiny of the affairs of this estate and the nature of the allegations made are such that no further action is necessary or appropriate.

The application for review

[13] Mr YC's application for review is couched in terms of a complaint against Ms NT, the Convener of the Standards Committee and signatory to the decision, and Ms Edge, the Lawyers Complaints Service Complaints Manager.

[14] Mr YC proceeded on the basis that these persons have assumed the status of counsel for Mr TX. This notion is as unfathomable as are the many bizarre references throughout the application.

[15] He refers to the Committee's "absolute failure to address the complaint before them ..." that being Mr TX's:

- (a) malfeasance;
- (b) contravention of statute;
- (c) dishonestly using documents;
- (d) criminal breach of trust; and
- (e) theft by person in special relationship.

² Standards Committee determination, 3 December 2013 at [18].

Review

[16] Mr YC did not consent³ to this review being completed on the material to hand. He required a hearing in person.

[17] On receiving a copy of the application for review Mr TX replied by email dated 12 February 2014:

I do not believe any further comment is warranted given the decision of the Standards Committee and the nature of the statements made by Mr YC. From my perspective they simply do not warrant it.

[18] Unfortunately, the case manager, using a template letter dated 13 February 2014, advised Mr YC:

Mr TX has advised our Office that he would like to rely on submissions already presented to the Standards Committee, copies of which you have already received.

This advice caused some confusion as Mr TX had not provided any substantive response to the complaint or submissions to the Standards Committee.

[19] The hearing took place on 31 October 2017 in Auckland. The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to cl 6 of sch 3 of the Lawyers and Conveyancers Act 2006 (the Act). The LCRO has delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

[20] Mr Vaughan referred Mr YC to the nature of the allegations made by him in the review application (and complaint) noting that they alleged the commission of criminal acts. Mr Vaughan advised Mr YC that this Office, and the Lawyers Complaints Service, did not have jurisdiction to consider complaints of a criminal nature. The jurisdiction of this Office extends only to a consideration of the investigation and determination of complaints to the Lawyers Complaints Service about professional standards.

[21] Mr YC questioned whether a Grant of Probate could be overturned by the Family Court judgment. Mr Vaughan declined to comment on that assertion and if Mr YC asserts irregularities in the court processes or lack of jurisdiction, such matters must be put before the court.

³ Lawyers and Conveyancers Act 2006, s206(2)(b).

[22] Mr YC referred to a lack of Estate accounting. Mr Vaughan referred Mr YC to the statement of Assets and Liabilities prepared by Mr TX and dated 15 January 2010. Mr YC discounted the correctness of that statement and asserted there had been no proper or full accounting of the administration of the Estate. That does not seem to be the case as can be seen from the material provided by Mr YC himself, but in any event, that constitutes a new complaint which cannot be considered on review.

Outcomes / costs

[23] There is absolutely no merit to Mr YC's complaints or to the application for review. Mr YC has been unsuccessful in numerous courts and judicial forums. The comment has been made that Mr YC is "simply ... unable or unwilling to accept the reality of the situation".⁴

[24] With regard to the allegation that Judge X judgment had not been sealed the High Court said:⁵

Redacted

[25] Mr YC brings his inability or unwillingness to accept the reality of the situation into this forum.

[26] Section 210(1) of the Act 2006 enables the LCRO to "make such orders as to the payment of costs and expenses as the Legal Complaints Review Officer thinks fit". Given the consumer protection focus of the Act it is rare for orders for payment of costs to be made against an applicant. However, this is a situation where consideration of such an order is appropriate.

[27] Mr YC is determined to continue to advance his complaints in the absence of any support by reference to Mr TX's conduct. Mr YC required a hearing in person that was of no assistance to the Review Officer or to Mr YC. In the circumstances, there are good reasons why Mr YC should contribute towards the costs of completing this review. The dominant reason no such order is made relates to the consumer focus of the Act. However, if Mr YC brings any other unmeritorious complaint to this Office for review, he may well be ordered to pay costs.

⁴MAP v RFP, above n 1, at [50].

⁵ C v C [20XX] NZHC XXX at [7].

Decision

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

DATED this 3RD day of November 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:

Mr YC as the Applicant
Mr TX as the Respondent
Mr LR as an interested person
Area Standards Committee X
New Zealand Law Society