

LCRO 161/2011

**CONCERNING**

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the Southland Standards Committee

**BETWEEN**

**IP**

Of [South Island]

Applicant

**AND**

**AR**

of [South Island]

Respondent

**DECISION**

**Introduction**

[1] Mr IP (the Applicant) sought a review of a Standards Committee decision declining to uphold his complaint against Mr AR (the Practitioner).

[2] The background is that the Practitioner had assisted the Applicant in relation to his separation from his wife. The Applicant had originally acted for himself, and had then approached the Practitioner for assistance. The Applicant was charged \$3,400 plus GST and disbursements. The Applicant's refusal to pay led the Practitioner to file a claim in the Disputes Tribunal.

[3] The Applicant's complaint to the New Zealand Law Society stated that the reason for his not paying was that he felt the Practitioner was working for the industry, and working for the opposition lawyer, and specifically not working in the best interests of his client, i.e. the Applicant.

[4] The Standards Committee considered the complaint and the Practitioner's response. The Committee declined to uphold the complaint, having found that they were unsubstantiated. The Committee noted that two of the papers that the Applicant had requested had been located on the file, and had been forwarded to the Applicant.

### **Review**

[5] The Applicant sought a review because he felt that the issues had not been adequately addressed by the Standards Committee. He added that he was grateful that the Standards Committee had been able to return to him two papers, but intimated that others were outstanding. He said there was little point in accepting the Practitioner's invitation to inspect the file, as the missing papers could have been removed or destroyed.

[6] The Applicant identified two particular letters that he wanted to have returned to him. These were found by the Practitioner and returned these to the Applicant.

[7] The outcome the Applicant wanted was for the Practitioner to withdraw his Disputes Tribunal Claim, and abandon his demand for payment.

[8] The consent of the parties was sought for the review to be conducted on the papers. The Practitioner consented. However, the Applicant's consent was conditional on the Practitioner withdrawing his costs claim, apologising and returning his papers.

[9] On 23 February the parties were advised that a review hearing was scheduled for 28 March. On 18 March the Applicant sought an adjournment. I considered the reasons for his request, which cited the weather, stress and lack of time to prepare. He also advised that the court proceedings had been discontinued which in his view, vindicated his complaint against the Practitioner.

[10] The reasons did not appear to me to justify an adjournment given the delays thus far, and the Applicant was informed accordingly. The Applicant repeated his request for an adjournment, seeking deferral until June or July, and said he wanted to update his review application due to 'ongoing developments'. The Applicant was informed the hearing would proceed.

[11] In the event the Practitioner attended the review hearing. Prior to the hearing proceeding, the Court Clerk contacted the Applicant twice and spoke with him at his home phone number, stating that we were willing to delay the start of the hearing pending his arrival (having been informed he lived not too far away), but nevertheless informed him that the hearing would proceed. The Applicant declined to attend.

[12] I conducted a review hearing with the Practitioner alone, focusing on elements in the Applicants complaint and review application.

[13] The following week the Applicant was contacted and invited to have a telephone discussion with the LCRO in relation to his review. He declined.

[14] Since that time I have received four further letters from the Applicant seeking a rescheduled hearing. He has been informed there will be no further hearing, but was offered a teleconference with me to discuss his complaints, an offer reiterated several times. However, he wants nothing less than another review hearing, although had been informed repeatedly this cannot happen.

[15] I consider that the Applicant has been given ample time and opportunity to discuss with me any matters that are additional to the material on the file. He has had more than a fair and reasonable opportunity to be heard. The stated reasons for the delay seem to concern what appears to be recent events. These are not relevant to the complaint, and he had been informed of this.

[16] Any further delay is unfairly prejudicial to the Practitioner and he should not have to wait any longer for the conclusion of this review.

[17] I have therefore proceeded to review all of the material on the file, in the light of all of the material on the Standards Committee file, and that provided in relation to the review.

### **Considerations**

[18] The complaint concerns services provided by the Practitioner, and in particular advice that was given.

[19] The Practitioner's response has clearly described the 'issues' he dealt with and the context of a relationship property dispute. At the time that he began acting for the Applicant, the brief only related to a Relationship Property Act proceeding. The Practitioner advised that the Courts jurisdiction, under that Act, was limited in relation to trusts. However, his concerns about the way that the trusts were being dealt with by the Applicant led him to discuss with the Applicant the risks of a further proceeding under the Family Proceedings Act under which the Courts had a significantly larger jurisdiction in respect of trusts.

[20] The services and advice involved two trusts which were advised by the Practitioner to be vulnerable to challenge for the reason that the Applicant had been

operating them as if they were his personal property. The Practitioner advised the Applicant of the prudence of settling all property matters at the same time, and to lift the veil on the trusts, and deal with the assets. Some of these assets were separately owned by the parties, and other assets appeared to qualify as relationship property if that approach were to be taken. Copies of correspondence sent by the Practitioner on the Applicant's behalf were on the file.

[21] The Practitioner had provided to the Standards Committee a full account of his work for the Applicant, including the advice given on the family trusts. A copy of the letter was sent to the Applicant for response. The Applicant responded, but did not criticise any of the legal matters that the Practitioner had done for him, stating that he sacked the lawyer for 'insider trading', and indicating that he was committed to resolving the issues with his wife.

[22] After terminating the Practitioner's services the Applicant commenced acting for himself again. He informed the Practitioner that he would not pay the bill, making allegation that the Practitioner's allegiances lay with the law firm acting for the Applicants wife, rather than the Applicant. (This seemed to relate to the 'insider trading' comment- he provided information about the connection between the Practitioner and a member of the law firm acting for his wife).

[23] The Practitioner said that the Applicant had not liked the advice he gave, particularly the recommendation that he simply deal with all relationship property on the basis that it was available for distribution between the parties. The Practitioner explained at the review hearing that the proceeding could be moved to the Family Court in a different jurisdiction, which would enlarge the Courts powers to examine the trusts for the purposes of determining whether the property was protected by the trust veil.

[24] The work performed by the Practitioner included filing affidavits, communicating with the Court and the lawyers acting for the wife, meetings with the Applicant and other miscellaneous matters. He eventually billed the Applicant in some of \$3,400.00. The Applicant further contended that the Practitioner's work was inaccurate, prepared in a hurry and that the work had to be redone.

[25] I have read all of the information, which included letters sent by the Practitioner to the other party, his explanation to the Standards Committee and all of the Applicant's correspondence. Any 'recent developments' that have been mentioned by the Applicant are not relevant to the issue of whether there has been any breach by the

Practitioner of the professional standards that apply. There are many reasons why proceedings may settle. I have seen nothing in the Applicant's recent postings that appears to me to be relevant that that issue.

[26] I have looked at all of the information on the file, and find little basis for criticising the advice given to the Applicant by the Practitioner. It appears to have been reasonable advice in the circumstances. It may well be that the Applicant was unhappy with the advice he was given, but a lawyer cannot be criticised for giving his client advice that he considers is in the best interest of the client, whether the client is happy with that advice or not.

[27] I can find no evidence of any kind of a relationship that could have given rise to a professional conflict on the Practitioner's part. I can see no breach of any of the Rules of Conduct and Client Care in relation to any matter.

[28] Although the Applicant continues to believe that the Practitioner has withheld documents, I note that the Practitioner has invited him on a number of occasions to come and inspect the remainder of the file, an offer that the Applicant has not taken up.

[29] The Applicant owes money to the Practitioner. It appears that very soon after the Practitioner (or his firm) commenced a claim in the Disputes Tribunal, the Applicant made a complaint to the New Zealand Law Society, and accordingly the Disputes Tribunal ordered that the proceeding be stayed. This recognised section 161 of the Lawyers and Conveyancers Act which requires any proceeding for recovery of an amount of a bill of costs, may not be commenced or proceeded with until after the complaint has been fully disposed of. This prevented the Practitioner proceeding with the Disputes Tribunal claim until after the New Zealand Standards Committees had disposed of it and until the end of the review period.

[30] The Applicant sought an order from this office to prevent the Practitioner taking this step. The making of an order of this sort by the Applicant is not within the LCRO's jurisdiction.

[31] In this case however I see no proper basis for intervening with the Practitioner's actions to recover the debt owed to him by the Applicant. The services have been provided, and the Practitioner is entitled to be paid for his services. There is nothing in any of the evidence to support the contention that the Practitioner was not acting in his client's best interests.

[32] For these reasons I see no basis in intervening with the Standards Committee decision which will be confirmed.

**Decision**

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

**DATED** this 15<sup>th</sup> day of June 2012

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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:

IP as the Applicant  
AR as the Respondent  
Southland Standards Committee  
The New Zealand Law Society