

**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 2

**BETWEEN**

**MS BY**

of Auckland

Applicant

**AND**

**MR XW**

of Auckland

Respondent

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

**DECISION**

[1] Ms BY sought a review of a decision made by the Standards Committee declining to uphold her complaint against Mr XW.

[2] The main reason is that in her view the Standards Committee did not deal with the complaint which she had made, but instead had erroneously described her complaint as one alleging that Mr XW was hiding information that he was legally obliged to hand over. She said this was not her complaint.

[3] The further reason was that she had named two lawyers in the complaint, but the Standards Committee had taken into account only one of the lawyers.

[4] I met with Ms BY at an Applicant-only Hearing. Mr XW had been invited to attend but declined to do so, and I understand that he is presently not well.

*The nature of Ms BY's complaint*

[5] Ms BY denied having alleged that Mr XW was hiding information. She described her complaint as concerning the *manner* in which two lawyers had engaged with her

when she made inquiries for her uncle's will. She alleged that both of the lawyers (Mr XW and Mr XV) had dealt with her in an abrupt and dismissive manner.

[6] When lodging her complaint with the New Zealand Law Society, Ms BY had described her concerns at some length and against background information that was included in her letter. Her uncle, BZ, had died on 30 April 2010, leaving no children. He had led Ms BY to understand that he had written a will which was left with his lawyers. On an earlier occasion her uncle had told Ms BY that Mr XW was his lawyer and on one occasion had taken her to Mr XW's Chambers (he was away at that time) and told her that if anything happened to him, that Mr XW was the person she should contact in relation to his affairs.

[7] After her uncle died, Ms BY went to Mr XW's Chambers to inquire after the will. She wrote that "*instantly they claimed that they had never heard of him without actively checking any records*". She added that Mr XW had subsequently recollected having acted for her uncle and a Maori land matter. Mr XW had explained that as a Barrister he holds no wills or other documents, and directed her to his former law firm, AAZ (now ABA) to inquire further. Ms BY considered that Mr XW's immediate response to her enquiry was unprofessional.

[8] Ms BY then attended AAZ and the administrator she engaged with did a brief computer check and informed her that the firm did not hold a will for her uncle. Ms BY was dissatisfied with the level of inquiry made (in her view a search ought to have included the firm's archives) and she subsequently returned to talk with Mr XV, who she claims was similarly abrupt and dismissive and told her that the firm held no documents for her uncle, but he agreed to look further and he subsequently telephoned Ms BY to say that nothing had been found. Ms BY was also dissatisfied with the manner in which Mr XV had dealt with her, also describing it as 'unprofessional'.

[9] On receiving the complaint the Auckland Standards Committee Director, Mr H, wrote to Ms BY to say that he had difficulty in ascertaining what the unprofessional conduct was that she was complaining about. He was unable to see how a lawyer's advice that he did not hold a will could amount to unprofessional conduct. He gave her some advice about the steps that she might consider taking to try and locate the will.

[10] In reply Ms BY explained that when she went to the barrister's premises he immediately implied that they had never heard of her uncle. She continued that when she went to AAZ she was again immediately informed that no will was held without having undertaken the necessary steps. She was unhappy with the approach taken by

the lawyers, namely their prompt dismissal of her inquiry and denial of knowledge of her uncle. She had found the lawyers' attitudes offensive.

[11] Ms BY also sent to the Standards Committee copies of historical correspondence about miscellaneous matters which demonstrated that Mr XW, and indeed AAZ, had acted for her uncle in past years, and as early as March 1982.

[12] Ms BY wrote again to Mr H a short time later, paraphrasing her complaint in this way:

*"What is unprofessional is their commercial practice not to purport to the necessary checks and their approach is disrespectful of any client's family seeking the necessary paper work to forego the deceased's last testament. Their approach is absolutely disrespectful to say the least. You do not tell a client, 'I have never known the man' without first checking. I have since then proved that he has known my uncle for the last 20-30 years and as I previously said he has been a client at AAZ for the last 40 years."*

Ms BY added: *"Their approach is disgusting!"*

[13] Mr H responded to Ms BY the same day saying *"I am becoming increasingly confused"*. He invited her to telephone him, adding that no investigation was being undertaken as he was unsure what should be investigated. Ms BY responded by email later that day to say that she felt she had been clear. She added that the complaint was to make sure that other clients were not met with the same *'unskilled practice'*.

[14] It is not clear that Mr H had a full grasp of the complaint but in any event he wrote back to Ms BY to say that the matter would be placed before the Standards Committee. Meanwhile, Mr H wrote to Mr XW, forwarded copies of the correspondence and invited him to comment should he feel it was appropriate to do so. Mr XW did not, in the event, write back in relation to the matter. No contact was made with Mr XV.

[15] The information on the file suggests that the Standards Committee did not perceive the essential complaint that had been made. At the same time it is fair to say that the volume of information forwarded by Ms BY may have somewhat masked her grievance.

[16] What became clear at the review hearing was that the Standards Committee had missed the point of the complaint, namely that Ms BY considered that both Mr XW and Mr XV had dealt with her in a manner that she felt was disrespectful, abrupt and dismissive.

[17] Having looked at all the material on the file it would be fair to say that the essential grievance was not readily discernable from the original letter of complaint, although it would also be fair to say that Ms BY's subsequent correspondence made numerous references to the manner in which the lawyers had dealt with her. However, I accept that the Committee did not address the essence of Ms BY's complaint, and that this very likely resulted from an imperfect understanding of the nature of the complaint.

[18] It is also clear that no contact was made with Mr XV who remains unaware of the complaint having been made against him. It is also evident that Mr XW was not required to respond to the complaint and his voice is absent.

[19] Ms BY is entitled to have her complaints considered by the Standards Committee, and in line with the objectives of the Act, is entitled to expect the Standards Committee to undertake an inquiry. In the circumstances, I consider it appropriate to return the matter to the Standards Committee to deal with the complaint made by Ms BY, which has been better clarified by this review decision.

### **Decision**

The Standards Committee's decision is vacated.

Pursuant to Section 209 of the Lawyers and Conveyancers Act 2006 the Standards Committee is directed to reconsider and determine Ms BY's complaint and to issue a new decision which shall also be subject to review.

**DATED** this 15<sup>th</sup> day of April 2011

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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:

Ms BY as the Applicant

Mr XW as the Respondent  
The Auckland Standards Committee 2  
The New Zealand Law Society