LCRO 163/2014

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the Standards Committee
BETWEEN	**SE** Applicant
AND	**VT, DJ AND CM** Respondents

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

DECISION

Introduction

[1] This is an application for review of a decision of the Standards Committee which considered complaints by Mr SE against VT, DJ and CM (the Practitioners). The Standards Committee did not uphold the complaints.

Background

[2] Messrs VT and DJ are partners of the law firm [Law Firm L]. Mr CM was an employed solicitor with the firm. He no longer works for [Law Firm L].

[3] The factual background is set out in some detail in the Standards Committee's determination. In 1999 Mr SE incorporated a company of which he and a Ms BW were the directors and shareholders. Mr SE was the majority shareholder, holding 90 per cent of the shares.

[4] In 2002 [Law Firm L] undertook legal work for Mr SE's company. Instructions were provided to [Law Firm L] by a Mr ET, an employee of the company.

[5] Problems arose within the company which lead Mr SE to suspect theft by his co-director Ms BW. Ms BW was removed as a director in late 2004.

[6] Around that time a dispute arose as to the shareholding in the company. It was contended that Mr SE held shares in trust for both Mr ET and another party. On one side of the dispute was Mr SE who had been instrumental in forming the company. On the other, Ms BW (a minor shareholder) and parties who professed to hold a shareholding in the company pursuant to an agreement they alleged had been reached with Mr SE (the BW group). The BW group instructed [Law Firm L] to act on their behalf. It is a material point in dispute as to whether [Law Firm L] were continuing to act in the role of lawyers for the company at the time they took instructions to represent Ms BW and her associates.

[7] A dispute arose concerning access to the company's MYOB accounting programme which was in possession of the company's accountants. Mr SE insisted that the accountant hand over the MYOB program to him. [Law Firm L], on instructions from the BW group, made demand on the accountant to refrain from releasing the MYOB program until the dispute had been resolved.

[8] This stand-off was not resolved until late 2006 when the program was provided to Mr SE.

[9] In mid 2013 Mr SE filed complaints against the three lawyers with the New Zealand Law Society Lawyers Complaints Service (NZLS). These were summarised as follows by the Standards Committee:

- Mr VT and Mr CM were alleged to have "refused to release files and/or financial records belonging to the company upon request by [Mr SE] and denied that they held such files/records".[1]
- They purported to act for the company without having proper authority to do so.
- They had conflicts of interest and breached client confidentiality.

[1] Standards Committee determination, 9 June 2014 at [11].

[10] Mr SE also lodged complaint against Mr DJ, alleging that he failed to report the alleged misconduct of Mr VT and Mr CM to the NZLS. He also sought compensation pursuant to s 18 of the Lawyers and Conveyancers Act 2006 (the Act).

[11] In response the practitioners submitted that:

- They had never acted for Mr SE.
- They denied acting for the company without authority.
- They had no conflict of interest in acting for the BW group.
- It was the company accountant's decision not to release the MYOB file to Mr SE.
- When the MYOB disk did come into their hands, they released the disk promptly to the SEs.

Standards Committee decision

[12] The Standards Committee distilled the relevant questions to address as follows:

- Did the Practitioners instruct the company accountant not to release the MYOB file?
- If so, was it appropriate for them to do so?
- Did Messrs VT and CM hold financial records belonging to the company and refuse to pass that information to the company?
- When did Messrs VT and CM act for the company and on what basis?
- Did the Practitioners act for the company without having proper authority to do so?
- Did the Practitioners have any conflict of interest or duty and/or did they breach client confidentiality?
- Did any conduct disclosed in an examination of the complaints amount to conduct such that proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982?
- Is Mr DJ liable to Mr SE and/or the company under s 18 of the Act?

Release of MYOB file

[13] The Committee concluded that the Practitioners, in making request of the accountant to refrain from releasing the MYOB file, were acting in accordance with their client's instructions.

[14] The Committee could see no evidence to support argument that the Practitioners held financial records belonging to the company.

When did Messrs VT and CM act for the company?

[15] The Committee concluded that it was commonplace for an employee of a company to provide instructions to a lawyer, and determined that at the time Mr SE became embroiled in a dispute with his fellow shareholder, the lawyers were acting not for the company, but for the group whose interests were opposed to Mr SE. No issue of acting without authority for the company arose.

Conflict/potential breach of confidentiality

[16] The Committee was satisfied that the lawyers had not at any time purported to act for the company without proper authority.

[17] Nor did the Committee consider that the practitioners had any conflict of interest or had breached their obligations of confidentiality to their client.

[18] The Committee considered the threshold required for disciplinary action pursuant to the relevant legislation at the relevant time, namely, the Law Practitioners Act 1982 and concluded "that none of the conduct concerned reached the threshold of being conduct such that proceedings of a disciplinary nature could have been commenced under the 1982 Act".[2]

Complaint against Mr DJ

[19] Mr DJ had no involvement with the legal services provided by Messrs VT and CM. The complaints against him related to his purported failure to comply with his professional duty to report alleged wrongdoing on the part of his partner and their employee. Mr SE contended that that Mr DJ was liable to him personally for pecuniary losses suffered by the company.[3]

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[2] Above n 1 at [41].
[3] Lawyers and Conveyancers Act 2006, s 18.

[20] The Committee's decision on both matters is set out as follows: [4]

> Rule 2.8 of the [Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008] would have required Mr DJ to report to the NZLS if he had "reasonable grounds to suspect" that Mr VT or Mr CM had been guilty of misconduct. The Committee did not consider it likely that Mr DJ thought that Mr VT and Mr CM had been guilty of misconduct and then wilfully chose to breach the rule and not report to the NZLS. It considered it more likely that Mr DJ did not consider there to be any grounds on which Mr VT and Mr CM were guilty of a breach of professional standards, particularly to the serious level of misconduct. In any case the Committee considered that the real crux of the complaint is with the conduct of Mr VT and Mr CM and it was unnecessary to extend the complaint to this issue.

[21] Regarding the liability pursuant to s 18 of the Act the Committee noted that:[5]

> (This section)... in essence provides for lawyers to be liable in certain circumstances in respect of pecuniary loss by reason of theft. However, it specifically relates to theft of money or valuable property that has been entrusted to the lawyer in the course of his practice. The SEs did not provide any evidence that any theft by Ms BW or Mr ET was in any way related to money or valuable property entrusted to Mr DJ (or Mr VT or Mr CM).

[22] Broad complaint had been made that the Practitioners, when providing assistance and advice to the BW group, had assisted their clients to perpetrate a fraud on the company. This complaint raised spectre of the Practitioners assisting their clients to engage in criminal activity. The Committee concluded that it had seen nothing to sustain those allegations.

[23] The Committee elected to take no further action on the complaints.

Application for review

[24] Mr SE has sought a review of the Standards Committee decision. He submits that:

- The New Zealand Law Society (NZLS) declined to put two relevant emails before the Standards Committee.
- The Committee erred in concluding that the Practitioners were authorised to accept instructions on behalf of the company from a company employee.
- The Committee erred in concluding that the Practitioners involvement in the business of the company was limited to providing advice on two tightly confined matters.

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[4] Above n 1 at [49].
[5] At [50].

- The Committee erred in concluding that the Practitioners were not responsible for failing to release the MYOB file.
- The Committee erred in concluding that the Practitioners held no financial records for the company.

[25] By way of remedy, Mr SE seeks findings that Messrs VT and CM had a conflict of interest and breached their fiduciary duty to the company (in instructing the accountant not to release the MYOB records), and confirmation that they had lied to the company and its representatives.

[26] In response to the review application, the Practitioners submit that:

- They place reliance on the information put before the Standards Committee.
- They had been properly instructed by the company.
- They were not conflicted in electing to take instructions from the BW group.
- They had not breached any obligations owed to the company, by making request of the company accountant to refrain from releasing the MYOB file.

Role of the Legal Complaints Review Officer on review

The role of the Legal Complaints Review Officer (LCRO) on review is to reach his own view on the information before him. Where the review is of an exercise of a discretion, it is appropriate for the LCRO to exercise particular caution before substituting his own judgement for that of the Standards Committee, without good reason.[6]

The Hearing

[27] Mrs SE appeared for the applicant. The Practitioners were represented by counsel. Mr VT also attended the hearing.

Analysis

[28] Each of the issues considered by the Standards Committee was comprehensively addressed by Mrs SE at the review hearing.

[29] The thrust of her submissions was focused on complaint that the Standards Committee had ignored evidence which would support a conclusion that the

[6] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [40]-[41].

Practitioners had a responsibility, because of their previous history of acting for the company, to refrain from acting for the faction that became embroiled in a dispute with the company's founder and majority shareholder, Mr SE.

[30] In failing to acknowledge the inappropriateness of the Practitioners agreeing to accept instructions from the BW group, she considered that the Committee were oblivious to the adverse consequences which flowed from the Practitioners accepting those instructions, in particular the extent to which Mr SE was disadvantaged by the BW group having access to information secured by the lawyers whilst acting in their capacity as lawyers for the company.

Failure to release MYOB program and retention of company records

[31] Mr SE complains that the Practitioners instructed the company's accountant not to release the MYOB file.

[32] He contends that his inability to access the company's financial records for a significant period of time had dire consequences for him. It prevented him from expeditiously obtaining financial records which would have assisted in identifying irregularities in the accounts.

[33] He argues that the unlawful retention of the company records advantaged the BW group (the Practitioners' client).

[34] He submits that the Practitioners' instruction to the company accountant to not release the records, was advanced to the company's accountant on the basis that the Practitioners had advised the accountant that they were providing those instructions on behalf of the company.

[35] Mr SE identifies email correspondence to him from the company accountant dated 16 November 2004 in which the accountant advised as follows, "SE I have now been instructed by the company solicitor (CM at [Law Firm L]) to hold the MYOB backup".

[36] The Practitioners disputed that they had advised the company accountant that they were acting on instructions from the company when giving instructions not to release the MYOB file.

[37] That explanation was accepted by the Standards Committee.

[38] Mrs SE raised objection that the Standards Committee, in accepting the position advanced by the Practitioners on an issue which was so material to the SE's complaint, gave no explanation as to why they preferred the Practitioner's views over the SEs' when the SEs' position appeared to be supported by correspondence written by the company accountant at the time the dispute was on foot.

[39] The position has however now become more certain. The company accountant has advised that his email of 16 November 2004 was incorrect when it recorded that the Practitioners advised him that they were acting for the company. He confirms, and has apparently done so in documents which are currently before the Court, that the Practitioners told him that they were acting for the BW group, not the company, when they conveyed their request to him not to release the MYOB file.

[40] Mr SE contends that the Practitioners should not have agreed to act for the BW group to begin with, and that issue will be returned to, but if it is established that there was no impediment to the Practitioners representing the BW group, then clearly no criticism can be made of the Practitioners for following their clients instructions when instructing the company accountant that their clients did not agree to the MYOB file being released to Mr SE.

[41] Mrs SE submits that the accountant has conveniently changed his recollection in an attempt to assist the Practitioners. I consider that to be unlikely. There is no apparent reason as to why the company accountant should compromise his professional reputation by providing a misleading recollection as to what had occurred. There is nothing to be gained by him in doing so, and indeed in acknowledging that he assumed responsibility for refusing to release the MYOB disk, he appears to have placed himself at risk of accepting responsibility for a decision that could potentially have adverse consequences for him.

[42] When the MYOB disk was released to the Practitioners, it was some days before they forwarded the disk to Mrs SE. It is argued that experts who have examined the disk believe that information was deleted from it.

[43] Whether that was or was not the case is not an issue to be determined in this forum. But I agree with the Committee that no professional conduct issues arise as a consequence of the Practitioners forwarding the disk to Mr SE a few days after the disk came into their possession.

[Law Firm L] initial instructions to act for the company and the scope of those instructions

[44] [Law Firm L] first received instructions to act for the company in 2002. Those instructions were provided by a company employee, Mr ET.

[45] Mr SE contended that Mr ET had no authority to instruct the practitioners.

[46] The Committee saw no difficulty with Mr ET instructing the Practitioners. I agree with the Committee. It is commonplace for a company employee to instruct a company's solicitors, and there is no evidence advanced to support argument that the company raised objection to the Practitioners performing this work for the company at the time the work was completed. Invoices were rendered and paid.

[47] The scope of the work completed by the Practitioners in 2002 was seemingly non-contentious. The Practitioners provided advice on terms of trade, and advice on a leaky building matter (unrelated to matters subsequently in dispute). Brief enquiry was made of the Practitioners on an employment matter, and some cursory advice was provided, but no file was opened or any account rendered in respect to the employment issue.

Alleged conflict of interest and breaches of client confidentiality

[48] Two further issues arise from the Practitioners accepting instructions to act for the company in 2002.

[49] In 2003 the company was experiencing financial difficulties. A decision was made to wind the company up.

[50] The dispute between Mr SE and the BW group now focused on division of the company assets. Mr SE remained convinced that funds had been fraudulently siphoned from the company. Litigation to resolve those issues is still, many years later, before the Court.

[51] The Practitioners accepted instructions from the BW group to act for the group in matters arising from the continuing dispute with Mr SE.

[52] Mr SE submits that it was improper for the Practitioners to do so, as the Practitioners had previously acted for the company (2002 instructions), and continued to act for the company at the time the dispute between the shareholder factions escalated in mid 2004.

[53] He contends that the Practitioners between 2002 and 2004 had continued to take instructions from Ms BW, and in the course of taking those instructions, had acquired sensitive financial information concerning the company's affairs and had used that information to benefit their clients.

[54] Mr VT responded to allegation that the Practitioners had continued to take instructions on company matters, after providing advice on the two issues in 2002.

[55] He advised that the Practitioners had not received any further instructions from the company, subsequent to those received in 2002. He has sworn an affidavit to that effect for the High Court. I am satisfied that [Law Firm L] took no instructions on behalf of the company, other than in respect to the two matters which were dealt with in 2002.

[56] There is no evidence to support argument that the Practitioners, in the course of carrying out work for the company, acquired information which would have had material relevance to the shareholders dispute.

[57] But the issue does arise as to whether it was appropriate for the Practitioners, having earlier accepted instructions to act for the company in 2002, to subsequently take instructions from a group purporting to have a shareholding interest in the company who were engaged in a dispute with the company's major shareholder.

[58] The Practitioners hold firm to the view that they were not conflicted. They contend that the company was a separate and distinct legal entity from the group they were representing.

[59] They emphasise that they had identified the potential for conflict arising, and had taken the precautionary step of writing to the company's lawyer in September 2004, to seek consent to act for the BW group. That consent was not forthcoming, however [Law Firm L] gave further thought to the issue, and concluded that there were no impediments to them continuing to act.

[60] The Committee notes at [3] of its decision, that there were circumstances which prevented Mr SE from being as directly involved in the company as he might otherwise have been.

[61] It appears to be the case that Mr SE had no involvement with instructing [Law Firm L].

[62] In July 2004, the dispute between the factions was escalating, prompting Ms BW to write to Mr SE advising that she had sought legal advice.

[63] On 27 July 2004, Mr SE responds as follows "As the lawyer works for [Company X] I would like to speak to him myself, please forward to me his contact details so that I can talk to him".

[64] Ms BW responded to Mr SE that same day. She provides Mr SE with [Law Firm L] contact phone number and cautions that involving lawyers will inevitably result in a drain on the company resources:

> SE, speak to VT by all means, however is it not best that we all get together before we involve lawyers too much? – You know as well as anyone that once they get involved there will be nothing left of the money. All I have done at the stage is give him an overview of what is happening.

[65] Those email exchanges are illuminating in two respects. Firstly they indicate that there was, at this stage of proceedings, a lack of clarity as to precisely who the Practitioners were representing. Secondly, and somewhat surprisingly, it confirms that Mr SE appears to have had so little involvement with the Practitioners who he understood represented his company, that he requires clarification of their contact details so that he can make contact with them.

[66] Ms BW does not challenge Mr SE's assumption that she has been talking to the company lawyers, and it would be reasonable to infer that if she was at this time proceeding on the assumption that the Practitioners were acting solely for her and her associates, she would have been less amenable to Mr SE speaking directly with Mr VT.

[67] By September 2007, steps had been taken by the Practitioners to ensure that there was no uncertainty as to whom they were acting for. Whilst there was clarity brought to the situation at this time, my view is that initially, Mr SE believed that the Practitioners' obligations lay with the company, not the BW group.

[68] The issue inevitably returns to the question as to whether the Practitioners were able to accept instructions from the BW group.

[69] They maintain that the issue of potential conflict was given careful consideration, and stand by their decision. They submit that they were acting for a group of shareholders (former or alleged) who were in dispute with another shareholder. They were not acting for the company, or against the interests of the company.

[70] The Committee considered that it may have been prudent for the Practitioners to step aside, but took the view that a lack of prudence did not equate to a breach of professional standards.

[71] Further, the Committee considered that it was not necessary to definitively determine a conflict of interest situation had arisen, as it considered that the Practitioners' conduct did not reach the threshold required for disciplinary action.

[72] The Act came into force on 1 August 2008. The conduct complained of in respect of the Practitioners took place prior to that date. Complaints lodged after 1 August 2008 concerning conduct that occurred prior to that date, fall under the transitional provisions in s 351(1) of the Act.

[73] If the conduct complained of occurred prior to 1 August 2008, the relevant disciplinary threshold to assess that conduct, is that established under the Law Practitioners Act 1982, being the legislation that governs lawyers disciplinary matters prior to the introduction of the 2006 Act.

[74] Under the 1982 Act disciplinary sanctions could be imposed[7] where a practitioner was found guilty of:

- misconduct in his professional capacity; or
- conduct unbecoming a barrister or a solicitor; or
- negligence or incompetence in his professional capacity, of such a degree or so frequent as to reflect on his fitness to practice as a barrister or solicitor or as to tend to bring the profession into disrepute.

[75] The Committee noted that misconduct and conduct unbecoming were the most relevant standards to assess the conduct complained of, and concluded that none of the conduct concerned reached the threshold of being conduct such that proceedings of a disciplinary nature could have been commenced under the 1982 Act.

[76] I agree with the Committee's view that the conduct complained of, if established, would not constitute conduct of such seriousness as to justify the imposition of sanctions under the thresholds established by the 1982 Act.

[7] Law Practitioners Act 1982, ss 106,112.

[77] Having arrived at that conclusion, I am able to simply affirm the Committee's decision to take no further action, and to leave the matter there, however in consideration to Mrs SE who advanced her husband's arguments at the review hearing with conviction, I will address the conflict argument on its merits, rather than simply dismiss those arguments by reference to the higher threshold for disciplinary intervention under the 1982 Act.

[78] A lawyer's duty of loyalty to his or her client lasts for as long as the client retains the lawyer. However, once the retainer has been terminated the lawyer is no longer under a duty to act in the client's best interests, to disclose information to them, or to advise them.

[79] It must be emphasised that the Practitioners argue that in accepting instructions from the BW group, they were not acting in a dispute involving their former client, the company, but were acting in a dispute between shareholder factions.

[80] That is fair argument, and an accurate representation of the legal status of the respective parties, but it cannot be reasonably argued that lawyers who accept instructions to act for a company, and then subsequently accept instructions to act for a group of shareholders in dispute with a rival faction, may not run risk of allegation that the group they are acting for has been advantaged by the lawyers acquiring information acutely relevant to the dispute, when acting for the company, and that there is tangible risk that the information could be used to advantage the lawyer's client.

[81] The Committee's conclusion that it would have been prudent for the Practitioners to step aside is acknowledgement of the potential risks that the Practitioners exposed themselves to, when they accepted instructions to act for the BW group.

[82] Several judicial decisions have considered whether a lawyer should be precluded from representing a client against a former client, or from representing a client against an existing client.

[83] Whilst a number of those decisions focused primarily on the question as to the appropriateness of a lawyer representing a client in court proceedings against a former client, the discussion in those cases, in as much as it expands into discussion concerning general issues of conflict, has relevance to professional disciplinary cases, when the centrepiece of complaint is allegation that the complainant's position has been materially prejudiced by his lawyer's decision to represent another client in proceedings or commercial transactions in which the complainant is engaged.

[84] In cases where attention has been focused on the propriety of a lawyer representing a client in proceedings against a former client it has been noted that the lawyers' rules of professional conduct which are engaged by discussion of conflict issues, are broadly the same as the legal obligations which the court will enforce against lawyers by ordering a disqualification.[8]

[85] It is not the case that a lawyer who has acted for a particular client is automatically precluded from acting against that client in the future, nor is it always the case that a lawyer acting for a client is necessarily prohibited from acting for other parties in matters involving that client.

[86] Loyalty to clients has been described as the hallmark of the legal profession. The idea that a lawyer will work to protect and promote the interests of his or her client to the exclusion of all others is at the root of the lawyer-client relationship.

[87] Equally as important, is a lawyer's obligation to ensure that a client's confidences are securely kept. Information secured by a lawyer in the course of their engagement with their client must be kept confidential, nor can that information be used to benefit any third party.

[88] It is Mrs SE's position that information obtained by the Practitioners in the course of acting for the company may have been used by the Practitioners, to Mr SE's detriment, when the Practitioners were providing advice to the BW group. She believes that the Practitioners were compromised and at minimum, exposed themselves to the risk of perception of a conflict.

[89] In the leading decision of *Russell McVeagh McKenzie Bartlett & Co v Tower Corporation*,[9] the Court of Appeal considered an appeal from a decision to disqualify a law firm from providing advice to a competitor of an existing client of the firm in proceedings brought against an existing client. That decision considered the balancing exercise to be undertaken when assessing competing interests. The Court addressed the several stages of enquiry to be undertaken when determining whether a firm ought to be disqualified from acting where a former client's confidences are potentially at risk.

[90] The Court considered that it should disqualify a lawyer from representing a party when:

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[8] *Russell McVeagh McKenzie Bartleet & Co v Tower Corporation* [1998] 3 NZLR 641 (CA) AT 677.
[9] Above n 8.

- The lawyer or a member of the firm holds confidential information;
- The information is sensitive, that is, of a nature such that its disclosure would adversely affect the client; and
- The lawyer or a member of the firm continues to act for the client with whom the conflict exists and a real or appreciable risk exists that the information would be disclosed.

[91] In considering whether to disqualify, the Court considered that it should take into account the following considerations:

- The value of litigants being able to avail themselves of their counsel of first choice.
- The right of the solicitor to offer his or her services to the public generally.
- The ability of lawyers holding confidential information to move between firms.
- The value of competition within the profession and access to specialist advice.

[92] Applying this test, the Court held that Russell McVeagh was not disqualified from continuing to act. The Court considered that the confidential information held by the law firm was not sufficiently sensitive to present risk of compromising its position.

[93] In the present case, I am not persuaded that if a balancing exercise was undertaken which addressed the factors considered relevant in the *Tower* decision, that fair conclusion could be reached that the Practitioners had become conflicted.

[94] In reaching that view, I pay particular attention to the following factors:

- The limited scope of the Practitioner's initial instructions received from the company.
- The lack of evidence to support conclusion that the Practitioners acquired, during the term of their retainer with the company, any information pertaining to the company's financial affairs material to the shareholders dispute.

- The evidence that the Practitioners had no engagement with the company's affairs between receiving instructions in 2002, and confirming instructions to act for the BW group in 2004.

- The dispute was not between the company and a group of shareholders, but between the company's major shareholder and a group who purported to have interests in the company as legitimate shareholders of the company.

[95] The principles expressed in cases such as *Tower*, do not provide absolute rules to determine whether a client's confidences have been placed at risk, but rather provide guidance as to factors to consider in balancing the interests of the parties.

[96] Mrs SE advises that there are currently proceedings before the High Court. If I understand correctly, those proceedings involve Mr SE, members of the BW group, [Law Firm L] and the company's accountant.

[97] Those proceedings, when concluded, will hopefully bring finality to contested issues concerning the composition of the competing shareholders interest, arguments as to whether funds were improperly drawn from the company, and the role of the company's professional advisers.

[98] After giving careful consideration to the written submissions, and the submissions advanced at hearing, I arrive at a similar view to the Standards Committee.

[99] It may have been prudent for the Practitioners to refuse to accept instructions from the BW group, but I do not consider that argument can be sustained that the Practitioners breached their professional obligations in agreeing to act for the group.

[100] I also agree with the Committee, that in the alternative, if conclusion was reached that the Practitioners were conflicted, the conduct would not reach the necessary threshold for intervention under the standards applicable under the Law Practitioners Act 1982.

[101] The Practitioners expressed concern at the delay in raising the complaints.

[102] The complaints which were lodged in July 2013 relate to breaches of conduct which are said to have commenced in 2004 and extended through to 2006.

[103] A seven year delay in pursuing complaint, whilst not precluded by the legislation, does inevitably present difficulties for parties who are called on to provide accurate recollection of events at such distance.

Complaint against Mr DJ

[104] The Committee rejected the complaint against Mr DJ (that he had failed to report suspected misconduct of Messrs VT and CM) and that he was liable to Mr SE under under s 18 of the Act. The Committee concluded that the relevant rule under the 1982 legislation required reporting if Mr DJ had "reasonable grounds to suspect" that Mr VT or Mr CM had been guilty of misconduct. The Committee found that it was unlikely he had breached the rule because it was:[10]

> …more likely that Mr DJ did not consider there to be any grounds on which [his colleagues] were guilty of a breach of professional standards, particularly to the serious level of misconduct.

[105] The Committee rejected any claim under s 18 of the Act because there was no evidence of theft of money or valuable property entrusted to the lawyers.

[106] I agree with the Standards Committee that there is no basis for pursuing a conduct complaint against Mr DJ on the grounds advanced.

Decision

Pursuant to section 211(1) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

Dated this 11th day of March 2015

R Maidment
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 SE as the Applicant

[10] Above n 1 at [49].

Messrs VT, DJ and CM as the Respondents
Ms RL as a Representative for the Respondent
Mr CR as a Related Person under s 213
North Island Standards Committee
New Zealand Law Society