

LCRO 163/2011 and
LCRO 164/2011

CONCERNING

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

AND

CONCERNING

determinations of the Auckland
Standards Committee 1

BETWEEN

EG and EH
of Auckland

Practitioners

AND

AUCKLAND STANDARDS
COMMITTEE 1

Respondent

DECISION

Application for review

[1] The Auckland Standards Committee 1 undertook own-motion investigations into the conduct of Ms EG and Ms EH (the Practitioners) after receiving information from the Legal Aid Services Agency (LASA). In respect of both Practitioners the Committee determined to refer the matters for consideration by the Disciplinary Tribunal pursuant to section 152(2)(a) of the Lawyers and Conveyancers Act 2006.

[2] Both of the Practitioners sought a review of their respective Standards Committee decisions. They sought the review essentially on procedural grounds, contending that the Standards Committee ought to have made an in-depth inquiry, which should have included an oral hearing prior to making a determination.

[3] The Practitioners sought to be heard on their review application and a hearing took place on 11 October 2011. The Practitioners consented to the review being combined, since the issues involved in the complaint, and the basis for the review application, were the same in each case.

Review

[4] It is well established that there are very limited grounds to review a prosecutorial decision. Any such decision must, however, be reached in accordance with the principles of natural justice.

[5] Section 142 of the Lawyers and Conveyancers Act requires Standards Committees to exercise and perform their duties, powers and functions in a way that is consistent with the rules of natural justice. A basic tenet of natural justice is that any individual charged with an offence or wrongdoing, or who is the subject of a complaint or allegation, is entitled to be fully informed of, and be provided with, all of the information that will be considered by the adjudicating body. Only in this way does an individual have an opportunity to respond to the allegation or complaint.

[6] What became apparent at the review hearing was that neither of the Practitioners were aware of the extent of information that had been sent by the LASA to the New Zealand Law Society. Each of them had only received a copy of the 16 September 2010 letter sent to the NZLS by the LASA raising conduct-related matters.

[7] They had understood that the content of that letter comprised the issues under the consideration of the Standards Committee. They responded accordingly.

[8] I was informed that neither of the Practitioners had been sent a copy of the file of information provided to the NZLS by the LASA.

[9] Following the review hearing, a written enquiry was made with the Auckland Standards Committee 1 seeking clarification about the documentation that had been sent to the Practitioners, signalling that if the Practitioners were correct then their concerns about procedural unfairness would have merit.

[10] By letter of 28 October 2011, the Standards Committee acknowledged that there had been an inadvertent error and that the Practitioners were not in fact sent all of the documentation. The Committee consented to the matter being directed back for reconsideration.

[11] The Practitioners were notified of this letter and were invited to forward any comments or submissions should they wish to do so. They advised they would await further advice from the LCRO.

[12] I have considered the above circumstances and have no difficulty concluding that there were significant procedural omissions in each case which were prejudicial to the Practitioners.

[13] In these circumstances it is appropriate that the Standards Committee decisions in respect of each of the Practitioners should be vacated with a redirection order. The Standards Committee decisions are vacated accordingly.

Redirection Order

Pursuant to section 209(1)(a) of the Lawyers and Conveyancers Act 2006 the Standards Committee is directed to reconsider the matter as a whole, in relation to each of the Practitioners.

DATED this 11th day of November 2011

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:

EG as an Applicant
EH as an Applicant
The Auckland Standards Committee 2
The New Zealand Law Society