

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2020] NZLCRO 89

Ref: LCRO 164/2018

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

VG

Applicant

AND

SQ

Respondent

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

Introduction

[1] Mr VG has applied for a review of the determination by [Area] Standards Committee [X] to take no further action in respect of his complaints that Mr SQ had misled and lied to the Lawyers Complaints Service and this Office when responding to previous complaints made by Mr VG about Mr SQ.

[2] The Standards Committee had declined to take any further action with regard to Mr VG's previous complaints, and that determination was confirmed by this Office on review.

[3] I am somewhat concerned that Mr VG is seemingly unable to accept the outcome of the previous complaint and review and suspect that the complaints procedure is being used to assist Mr VG in defending proceedings against him by the law firm in

which Mr SQ is a partner, for recovery of outstanding fees.¹ This concern is reflected in the final general comments made in this decision.

Mr VG's complaints

[4] Mr VG complained that Mr SQ had “consistently lied” to the Standards Committee and this Office when responding to Mr VG’s earlier complaints about him.

[5] Mr VG’s earlier complaints were that Mr SQ had made an unauthorised offer to pay the sum of \$10,000 to his former wife by way of spousal maintenance and had not acted on Mr VG’s instructions to pursue recovery of overpayment of child support.

[6] Mr VG asserted he had circumstantial evidence that supported “his version” of what had happened but because he was unable to see Mr SQ’s file,² he could provide nothing more.

The Standards Committee determination

[7] The Standards Committee traversed in some detail, the matters in respect of which Mr VG had instructed Mr SQ.

[8] Mr SQ commenced acting for Mr VG whilst he was a barrister sole. However, in June 2014, he joined the firm of [law firm] and continued acting for Mr VG as a barrister and solicitor.

[9] The matters in respect of which Mr VG had instructed Mr SQ were in relation to an application by Mr VG’s former wife for spousal maintenance and division of relationship property, together with other issues arising from their marriage breakdown.

[10] The issues addressed by the Standards Committee were:³

- Whether Mr SQ made an offer, ostensibly on Mr VG’s behalf but without his authorisation, to pay Ms JJ \$10,000.00 in spousal maintenance, and if so, whether Mr SQ breached his professional obligations under Rule 3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) and/or any other Rule or enactment;

¹ Mr SQ is a partner in the firm [law firm].

² Mr VG was unable to uplift his file from [law firm] because there were unpaid invoices.

³ Standards Committee decision (8 August 2018) at [16].

- Whether Mr SQ misled [Area] Standards Committee [X] and the LCRO to the extent that he claimed that he had never made an unauthorised offer to pay spousal maintenance, and if so, whether Mr SQ breached rr 2, 2.1, 13 and 13.1 of the Rules and/or any other Rule or enactment;
- Whether Mr SQ misled [Area] Standards Committee [X] and the LCRO to the extent that he claimed that Mr SQ had never instructed him in respect of IRD/child support matters, and if so, whether Mr SQ breached rr 2, 2.1, 13 and 13.1 of the Rules and/or any other Rule or enactment;
- Whether Mr SQ refused to release Mr VG's file, despite his requests, and if so, whether Mr SQ breached his professional obligations under r 4.4 and following of the Rules and/or any other Rule or enactment.

Spousal maintenance

[11] The Standards Committee discussed as a preliminary matter, whether it could address this issue, because, although it had not been directly addressed by the Standards Committee in the first complaint, it had been specifically addressed in the review by this Office of that Committee's determination.

[12] The "Committee readily acknowledged that an allegation that a lawyer has acted without instructions is an inherently serious one".⁴

[13] It noted:

... when a ground of complaint is serious, there is a corresponding requirement for the complainant to adduce strong and persuasive evidence if that allegation is to be made out.

[14] The Committee then addressed the information supplied by Mr VG in support of his allegations, noting that it was circumstantial evidence from which Mr VG had drawn conclusions.

[15] It "considered that, far from giving credence to what Mr VG has claimed, the weight of evidence supported Mr SQ's position that the offer was made on the instructions of his client".⁵ It also took into account the fact that Mr VG had subsequently made the payment to his former wife.

⁴ At [32].

⁵ At [35].

[16] The Committee was not satisfied that “the offer to pay \$10,000 by way of interim spousal maintenance was made without Mr VG’s authorisation”⁶, and determined to take no further action in respect of this issue.

[17] Having made that determination, it followed that the Committee did not accept that Mr SQ had lied to the previous Standards Committee and this Office when responding to the complaint.

IRD/child support

[18] With regard to this issue the Committee made the following determinations:

[53] The Standards Committee readily accepted Mr SQ’s submission that he has at no time denied that Mr VG sought to instruct him in respect of child support/IRD matters, whether in the investigation of the first complaint, the review application before the LCRO or the investigation of the second complaint. ...

[54] The Standards Committee acknowledged that Mr SQ has denied ever having accepted instructions to act for Mr VG in separate proceedings in the appropriate jurisdiction to address IRD/child support matters. ...

...

[56] The Standards Committee accepted Mr SQ’s submission that agreeing to engage in general communications with Ms JJ’s counsel regarding IRD/child support matters, and subsequently putting questions to Ms JJ on IRD/child support matters during the August 2015 COCA hearing, was quite distinct from accepting Mr VG’s instruction to specifically advance proceedings to review Mr VG’s assessed child support obligations. Mr SQ never agreed to act on such instructions. ... The Standards Committee was accordingly satisfied that Mr SQ had at all times been truthful in his interactions with the Standards Committee and the LCRO.

[19] The Committee determined to take no further action with regard to this issue.

Release of file

[20] Mr VG did not specifically complain that Mr SQ was refusing to release his file. In the complaint form he said:

Mr SQ’s firm have [sic] not made it possible for me to see my file to provide more evidence of this unauthorised offer.

[21] He added:

The LCRO did not look into this.

⁶ At [37].

The Officer was not aware of it until I showed her the reference at the hearing (... I have requested a meeting with the principals of Mr SQ's firm. This has been declined by the firm).

The outcomes of the review sought by Mr VG did not include a request for an order that the firm release the file.

[22] The Committee noted that Mr VG owed the firm "a considerable amount in unpaid fees"⁷ and "accepted that [law firm] is consequently entitled to withhold the file from Mr VG".⁸

[23] It then noted that the firm had offered Mr VG the opportunity to inspect the file, but Mr VG had chosen not to do so.

[24] The Committee determined that Mr SQ had not breached any professional obligations and consequently determined to take no further action in respect of this matter.

General

[25] In a final general comment in its determination, the Committee recorded "that it had careful regard to all of the numerous allegations and grounds of complaint raised by Mr VG, including those ancillary to or otherwise related to the principal allegations"⁹ but "disagreed with Mr VG' view that Mr SQ had somehow breached his professional obligations".¹⁰

Mr VG's application for review

[26] In simple terms, Mr VG disagrees with the determinations of the Standards Committee. He says that he had located an email in the file released to him in which he "clearly...instructed Mr SQ NOT to make any offer of spousal maintenance" and generally, the Committee had preferred "Mr SQ's word over [his]".

[27] Attached to the application for review is a significant volume of material which is largely unreferenced to the application.

⁷ At [65].

⁸ Ibid.

⁹ At [68].

¹⁰ At [69].

[28] The review progressed by way of a hearing with Mr VG which took place on 27 February 2020.

[29] Following that hearing I wrote to Mr SQ requesting him to respond to a number of issues, which reflect the matters discussed at the hearing. A copy of that letter was sent to Mr VG.

[30] Mr SQ responded by letter (25 May 2020), which was copied to Mr VG. Mr VG initially asked if he could provide comments on Mr SQ's response but within a short time provided a copy of the "script" that he had prepared for the hearing.

[31] This decision is made on the basis of all material received.

Review

[32] At the review hearing with Mr VG, and in correspondence to Mr SQ,¹¹ I have emphasised that this review must concentrate on the allegations by Mr VG that Mr SQ lied to the Standards Committee and this Office when responding to Mr VG' previous complaint.

[33] This was not to be a forum in which the previous complaints were to be revisited.

[34] To accuse a lawyer of lying is a serious allegation. The onus falls heavily on Mr VG to provide incontrovertible evidence in support of his allegations.

Spousal maintenance

[35] Mr VG asserts that Mr SQ lied to the Committee and this Office when he said that he had instructions from Mr VG to make the offer of interim spousal maintenance.

[36] Mr VG himself acknowledges that his evidence is circumstantial. He refers to an email from his former wife's lawyer¹² confirming the offer made by Mr SQ. That is accepted but it does not amount to proof that Mr SQ was not authorised to make the offer.

[37] In my view, the complaint, and now this review, amounts to little more than an attempt to have Mr VG's previous complaints addressed again.

¹¹ LCRO, letter to Mr SQ (27 February 2020).

¹² Mr AB, email to Mr SQ (19 April 2011).

[38] In considering this matter, I am somewhat surprised that Mr SQ is unable to provide evidence of his instructions. In addition, his responses are contradictory. For example, in LCRO 226/2016, the Review Officer noted:¹³

“Mr SQ is unable to recall events at the time, but recognises the allegation as serious, and doubts it is correct, and says he is unable to recall events with any accuracy”.

[39] However, in response to the specific questions put to him by me in correspondence Mr SQ says:¹⁴

“In the course of discussions and negotiations between counsel” prior to “the matter being called before” the Judge “it was proposed by counsel for Mr VG’s former wife that the application for interim spousal maintenance be resolved by a payment by Mr VG of \$10,000 to Ms JJ. That proposal was put to Mr VG and he consented to it specifically”.

[40] That is somewhat different to his response in the previous review.

[41] In the correspondence from me referred to above, Mr SQ was requested to:

- (a) ... advise how, and when, Mr VG authorised you to make that payment?
- (b) ... provide a copy of any file note or other document confirming your instructions.
- (c) ... identify in your timesheets the date of any telephone discussion in which Mr VG authorised the offer.

[42] In his letter of response, Mr SQ did not provide any of this information.

[43] Against this however, the fact that Mr VG did not object at the time, and paid the amount to his former wife, counts heavily against his assertions that he did not authorise the payment. He clearly retrospectively confirmed the offer.

[44] As noted by the Committee, all of the evidence is circumstantial. None of the matters raised provide the incontrovertible evidence required to make a finding that Mr SQ lied to the Standards Committee and this Office.

¹³ At [23].

¹⁴ Mr SQ, letter to LCRO (25 May 2020).

[45] This necessarily leads me to confirm, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the determination of the Committee to take no further action in respect of this issue. This is the only decision that can be made.

IRD/child support

[46] Mr VG's complaints with regard to these matters are the same, namely, that Mr SQ lied to the Standards Committee and this Office when his complaints about these matters were previously considered.

[47] Mr SQ has acknowledged that Mr VG repeatedly requested him to seek a declaration from the court that Mr VG had shared care of his children in the context of the Care of Children Act 2004 (CCA) proceedings. Mr VG intended that if he was successful in getting such a declaration he could then challenge the IRD's assessment of his child support payments.

[48] Mr SQ consistently advised Mr VG that it was inappropriate to seek such a declaration from the court in the course of the CCA proceedings and that if Mr VG wished to challenge the IRD assessment then he should instruct a person who had expertise in this area. Mr SQ advised that a member of the firm had the necessary experience.

[49] Mr SQ did not take Mr SQ's advice.

[50] All of this was very clear to the Standards Committee. It was also very clear to the Review Officer who addressed that issue in paragraphs [34]–[37] of her decision.

[51] There is absolutely no basis for Mr VG's assertions that Mr SQ lied to the Standards Committee or this Office with regard to this issue.

Release of file

[52] Mr VG complained that Mr SQ refused to release his file to him in a timely manner. Mr VG's allegations are not correct. Mr SQ's file when acting for Mr VG as a barrister was available for Mr VG to uplift at all times. The [law firm] file was available for Mr VG to review under supervision as he had not paid all of the firm's fees.¹⁵

¹⁵ [law firm], letter to Mr VG (21 November 2017).

[53] The Committee's determination to take no further action with regard to this complaint is confirmed.

Outcome sought

[54] Mr VG "would like the LCRO to review the decision and hold Mr SQ and [law firm] to account for their misconduct..."¹⁶

[55] Mr VG's complaint was about Mr SQ. The Standards Committee determination related to Mr SQ. This review considers only Mr SQ's conduct.

[56] There can be no complaint made or considered, about [law firm], as it is not an incorporated firm. Where a law firm is not incorporated complaints can only be made about individual lawyers.

Decision

[57] Having considered all of the material on this file, and the issues raised by Mr VG at the review hearing, I confirm pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determinations of the Standards Committee.

General

[58] I am concerned that Mr VG has continued his complaints about Mr SQ for many years. In the complaints which are the subject of this review, he has, in essence, made the same allegations as previously considered by the Standards Committee and this Office on the basis that Mr SQ had lied to the Committee and this Office.

[59] It should not pass without comment, that responding to complaints, and applications for review, can be, and are, troubling and time consuming for lawyers.

[60] In the present instance Mr SQ has not sought costs against Mr VG and it is infrequent that costs are awarded against a client applicant.

[61] However, Mr VG is on notice, that if the issues addressed in (now) two Standards Committee complaints and LCRO reviews come before this Office again, in

¹⁶ Application for review, part 8.

whatever format, this Office will favourably consider an application for costs against Mr VG by Mr SQ.

DATED this 2ND day of JUNE 2020

O Vaughan
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 VG as the Applicant
Mr SQ as the Respondent
Ms MP as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society