

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of [an Auckland Standards Committee]

BETWEEN

MR UY

Applicant

AND

DR J BUNBURY

Respondent

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

DECISION AS TO PUBLICATION

Introduction

[1] On 4 March 2013 I issued my decision as to findings and penalty in this review. In that decision, I invited the parties to provide submissions with regard to publication of the facts of this decision and also Dr Bunbury's name. I set out in some detail the factors to be considered in reaching a decision on publication.

[2] Submissions were provided by Ms VF which were endorsed by Mr UY, and by Dr Bunbury.

The Law

[3] Section 206(1) of the Lawyers and Conveyancers Act 2006 provides that:

“Every review conducted by the Legal Complaints Review Officer under this Act must be conducted in private”

[4] Whilst it is the common practice of this Office to publish decisions on its website, unless there is an order as to publication, no identifying details of the parties or events which could lead to the identification of the parties, or any other person referred to in the decision will be published.

[5] Section 206(4) of the Act provides:

The Legal Complaints Review Officer may, subject to sub section (3), direct such publication of his or her decisions as he or she considers necessary or desirable in the public interest.

[6] Public interest is the predominant factor in determining whether there should be publication or not. In this instance, the questions are whether the facts of this decision and/or Dr Bunbury's name, should be published.

[7] In addition to the statutory direction as to public interest, the other factors to be taken into account when considering whether to publish the name of a practitioner or not are set out in the LCRO Publication Guidelines. These are:

- a) The extent to which publication would provide protection to the public including consumers of legal and conveyancing services;
- b) The extent to which publication will enhance public confidence in the provision of legal and conveyancing services;
- c) The impact of publication on the interests and privacy of:
 - i. The complainant;
 - ii. The practitioner;
 - iii. Any other person;
- d) The seriousness of any professional breaches; and
- e) Whether the practitioner has previously been found to have breached professional standards.

The submissions for Mr UY

[8] Ms VF has made the following submissions:

- The findings against Dr Bunbury are serious, as reflected in the number and scope of orders made. They cover conduct which took place over [an extended period of time] highlighting a pattern of behaviour rather than a 'one off aberration'.¹

¹ Ms VF's submissions dated 28 March 2013.

- It is in the public interest that Dr Bunbury be identified for the following reasons:
 - a) That Dr Bunbury's thesis on the topic "contract - deceit/fraud"² placed him in a position of being able to understand the consequences of his conduct.
 - b) Dr Bunbury's qualification, which he uses to promote his services, enhances his respectability.
 - c) Dr Bunbury appears to reflect 'value for money' in that his services are provided at usual market rates.
 - d) The purposes of the Lawyers and Conveyancers Act 2006 is to maintain public confidence in the profession.
 - e) Without publication clients / consumers are deprived of the opportunity to make an informed decision as to whether or not to retain the services of Dr Bunbury.
 - f) [The region in question] is a relatively small legal environment and "Dr Bunbury's advantage"³ [because of his qualifications] becomes an unfair advantage if consumers are unaware of the findings against Dr Bunbury.
 - g) It would be perverse if because of the relatively unique nature of the events, that Mr UY was identified from reports of this decision whilst Dr Bunbury's identity remained unknown.
 - h) The public interest overrides the potential impact of publication on Dr Bunbury and his family.
 - i) The seriousness and type of misconduct, the pattern of behaviour over an extended period of time and Dr Bunbury's heightened academic knowledge all weigh in favour of publication.

Dr Bunbury's submissions

[9] Dr Bunbury made the following submissions:

² Above n1.

³ Above n1.

- Any issue of public interest in relation to whether he, or in a general sense, other lawyers, properly identified clients at the outset of the transaction is of historic interest due to the fact that lawyers now have a duty to send out a letter of engagement at the earliest opportunity. He submitted that this requirement has therefore remedied any general concern the public may have in relation to this matter.
- He expressed concern that Mr UY's pursuit of publication had an ulterior motive.⁴
- He should be subject to no harsher nor lenient treatment than any other practitioner, whereas Ms VF's submissions that he should be singled out because he has a PHD is improper.
- Findings and allegations about non parties were made in the decision without those persons having an opportunity to be heard and that it was therefore inappropriate to publish such findings or allegations.
- The decision has had a serious and profound personal impact on him personally and he is unable to see how amplifying that effect through publication would serve any public interest.
- He was otherwise unaware of how the public interest would be served by publication; and such public interest as there was, would be served by publication with all names anonymised. Any publication of his name would only serve as extra punishment.

The events giving rise to the complaints

[10] When seeking submissions from the parties, I requested Mr UY in particular to provide submissions with regard to the facts, given that even if they were anonymised, the facts may readily be identified as relating to him and the [Company Z] group of companies. In her submissions, adopted by Mr UY, Ms VF referred to this issue only by way of noting that it would be perverse if Mr UY were identified by reason of the

⁴ Following the hearing Ms VF forwarded further comments, a copy of which was provided to Dr Bunbury. At para 1 of that letter Ms VF stated:- "It is clear our previously expressed view that we could use any adverse findings against Dr Bunbury in [pursuing] civil claims against him was of considerable concern to the LCRO. We do not want that position to distract from the substantive issues – therefore we extend an undertaking to the LCRO that we will not pursue Dr Bunbury civilly based on any findings handed down by the LCRO."

Letter from Ms VF to Legal Complaints review Office in relation to post hearing comments dated 18 February 2013.

facts (even anonymised) of this decision, whilst Dr Bunbury was not. Ms VF did not otherwise request that the facts not be published.

[11] Ms VF's only concern was that Mr UY should not be confused with [one of his family members] who shares the same name. That much is clear from the decision itself where at [3] it is noted that Mr UY (the complainant) became the sole shareholder of the company which had been founded by [said family member].

[12] It is not of course proposed that Mr UY (the complainant) be identified by name and there will be no publication of the names of any other persons or entities referred to by name in the decisions. That will remove Dr Bunbury's objection to publication on the grounds that other persons referred to in the decision would be prejudiced by publication.

[13] As Mr UY has not objected to publication of the facts of the decision, anonymised to remove all identifying names and events, there is no reason why publication of the facts should not proceed on that basis.

Should Dr Bunbury's name be published?

[14] As noted, public interest is the predominant factor to be considered in determining whether there should be publication of Dr Bunbury's name or not. In this regard, the purposes of the Lawyers and Conveyancers Act (2006) as expressed in section 3, 1(a) and (b) are relevant to this consideration. Those purposes are:

- a) To maintain public confidence in the provision of legal services.
- b) To protect the consumers of legal services.

[15] It is helpful to recall the findings in the substantive decision:

- With regard to [Company Ea], I found that "Dr Bunbury's conduct was not acceptable according to the standards of "competent, ethical and responsible practitioners."⁵ He failed to properly advise Mr UY as to the content of the documents sent to him for signing and provided an untrue certificate to [Firm B]. Consumers of legal services expect that their lawyers will advise them on the content of documents put before them for signing, or at least be able to proceed with confidence on the basis that any onerous obligations assumed by the client are properly identified.

⁵ LCRO decision dated 4 March 2013 at [56].

I consider that it is important for potential clients of Dr Bunbury to be aware of this finding before engaging his services.

In addition, as referred to in the substantive decision, lawyers rely heavily on certificates and undertakings provided by other lawyers. Dr Bunbury provided an untrue certificate to [Firm B] and I would be failing in my duty to other lawyers to whom Dr Bunbury provides a certificate or undertaking if they were unaware of this finding.

- With regard to the events which occurred with regard to the [North Island] franchise, I have found that Dr Bunbury was guilty of conduct “which is not acceptable according to the standards of competent, ethical and responsible practitioners.”⁶ Dr Bunbury acted for [Company A] in repurchasing the franchise, and then acted for the purchaser of that business from [Company A], leaving that company unrepresented in a complex transaction. Consumers of legal services are entitled to rely on their lawyer to protect and promote the consumer’s interest and are entitled to be made aware of the name of any lawyer who has not fulfilled that obligation.
- With regard to the sale of the [Business A], Dr Bunbury again failed in his duty to protect and promote the interests of Mr UY and his companies. Again, consumers of legal services are entitled to be made aware of the identity of a lawyer who does not do this.
- Dr Bunbury provided legal services to several parties in the same transaction without seeking consent from the parties in terms of the Conduct and Client Care Rules.⁷ Consumers of legal services are entitled to know if a lawyer has failed to recognise and address a situation where there is a conflict of interest.

[16] All of the above dictate that Dr Bunbury’s name should be published. However, it is necessary to consider the other factors relevant to the question of publication.

Letters of engagement

[17] Dr Bunbury submits that because the Conduct and Client Care Rules now require client information to be provided to a client before work is undertaken, the identification

⁶ Above n5 at [73].

⁷ Lawyers and Conveyancers Act 2006 (Lawyers: Conduct and Client Care) Rules 2008.

of who he (or lawyers in general) is acting for, will no longer arise. That submission implies that the requirements of the Client Care Rules has caused Dr Bunbury to focus more on this issue and that similar lapses will not occur in the future.

[18] Dr Bunbury acted for Mr UY from [over an extended period of time]. The Conduct and Client Care Rules came into force on 1 August 2008. The requirements of the Rules clearly did not act as a check to prevent the breaches which occurred after that date.

[19] In addition, it is difficult to accept that adherence to an administrative function would necessarily overcome the underlying disregard for the interests of his clients such as has occurred in these circumstances.

[20] For these reasons, I do not accept this submission as a reason to not publish Dr Bunbury's name.

The impact of publication on Dr Bunbury

[21] In his submissions Dr Bunbury included the following:⁸

6. The decision has had a serious and profound personal impact on me personally. I am unable to see how amplifying that effect through publication will serve any public interest.

7. I am otherwise unaware of how the public interest would be served by publication. However, if there is any public interest served by publication I submit that publication with all names anonymised will serve that purpose, and that any identification of my name can only serve as extra punishment.

[22] Dr Bunbury practices in a region where I expect lawyers are well known to each other and in the community. Ms VF in her submissions at the review hearing made the same observation. Her observation was however made in the context that Dr Bunbury's name should be published, to protect consumers of legal services, and also to remove any suspicion of other lawyers. In this regard, non publication of Dr Bunbury's name may adversely impact on other lawyers in the region if publication (even in an anonymised form) results in recognition of the general events which occurred and in that sense can be seen as maintaining public confidence in the provision of legal services.

⁸ Mr Bunbury's submissions dated 9 March 2013.

[23] Dr Bunbury has not specified how he considers publication would add to the adverse impact on him. One submission that is often made in these circumstances is that publication would have a negative impact on the law firm in which the practitioner practises. That submission was made on behalf of Mr Rondel in *Berry v Rondel*⁹. I noted in my decision as to publication in that review that:

[90] Mr Rondel will have the opportunity to address any concerns that existing or potential clients may have. They will be able to make their own assessments of Mr Rondel from their personal knowledge of his performance when handling their affairs. It is only right that they are made aware of the issues that have arisen in this matter and make their own assessments of Mr Rondel's performance with this knowledge. If Mr Rondel has represented these people to their satisfaction, there is every likelihood that they will remain clients.

[24] These comments apply equally in respect of any adverse impact on Dr Bunbury's practice.

[25] Dr Bunbury otherwise submits that he is "unaware of how the public interest would be served by publication", and that publication of his name would only act as further punishment rather than being in public interest. Earlier in this decision I have recorded how I consider the public interest would be served by publication of Dr Bunbury's name.

[26] The remaining factors to be taken into account are the seriousness of the breaches, and whether or not Dr Bunbury has previously been found to have breached professional standards.

[27] In the substantive decision, I have variously described Dr Bunbury's conduct in the following terms:

- "... he failed absolutely to recognise or fulfil his obligations to Mr UY"¹⁰
- "Such a failure is a serious abrogation by Dr Bunbury of his duty to Mr UY..."¹¹
- "This is an extremely irresponsible approach to take in respect of his obligations to [Company A]"¹²

⁹ LCRO 130/2011 *Berry v Rondel* dated 26 April 2012.

¹⁰ Above n5 at [60].

¹¹ Above n5 at [60].

¹² Above n5 at [61].

- "...Dr Bunbury had a duty to protect the companies' interests, an obligation which he failed to meet in connection with this matter"¹³

[28] At [75] and [86] of the substantive decision I recorded consideration of whether or not the matter should be referred to the Lawyers and Conveyancers Disciplinary Tribunal. In addition, the fine imposed with regard to the sale of the [Business A] was close to the maximum fine that could be imposed.

[29] All of the above indicate the seriousness of the breach of professional standards.

[30] Dr Bunbury did not advise whether or not he had previously been found to have breached professional standards. However, from inquiries made by me, I have ascertained that there has been one other finding of unsatisfactory conduct against Dr Bunbury in September 2012. I have inquired no further but would have expected Dr Bunbury to have provided this information in his submission. As I do not know the details of that finding, I have not placed any weight at all on that information and proceeded as if there were no other adverse findings. However, that is offset by the number and seriousness of the findings against him. Although the events which occurred all involved the same parties, I consider the extent of his shortcomings is such that the public and the profession is entitled to be made aware of the facts to enable them to make a fully informed decision in their dealings with Dr Bunbury.

[31] Having weighed all of the factors, I have come to the decision that Dr Bunbury's name should be published.

Decision

[32] Pursuant to section 206(4) of the Lawyers and Conveyancers Act 2006, I direct that the details of the findings decision dated 4 March 2013 and this decision be published including Dr Bunbury's name but with the names of all other persons and entities referred to in the decision being anonymised, as well as any other facts that could identify Mr UY or the events which occurred.

DATED this 7th day of May 2013

O W J Vaughan
Legal Complaints Review Officer

¹³ Above n5 at [81].

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr UY as the Applicant
Dr J Bunbury as the Respondent
[An Auckland Standards Committee]
The New Zealand Law Society