LCRO 170/2011

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the Wellington Standards Committee 1
BETWEEN	**LP**
	Applicant
AND	**VS, VR, VO, VQ and VP**
	Respondents

DECISION

Introduction

[1] This is an application for review of a decision of the Wellington Standards Committee 1 which considered a complaint by LP (the Applicant) against VS, VR, VO, VQ and VP (the Respondents). The Standards Committee decided to take no further action on the complaint, and the Applicant seeks a review of that decision.

Background

[2] It appears from Court decisions on file that in 1989 the Applicant, who had been practising as a solicitor on his own account, was prohibited from doing so by the New Zealand Law Society (NZLS) but permitted to practise as an employed solicitor. Two of the Respondents, Messrs VS and VP, apparently took over the Applicant's former practice and employed him as a staff solicitor. Things did not work out and in 1991 the Applicant issued proceedings in the High Court at Wellington against Messrs VS and VP. The claims related to various allegations regarding money and chattels but failed except in relation to the wrongful detention of some chattels for which damages were awarded.

[3] According to Mr VS (letter to NZLS, 3 March 2011):

> "During the 1990s, [the Applicant] continued to lodge various complaints with the Law Society, all to no avail, against [the Respondents] [VP] and [VS]."

[4] In 2009, some 18 years after the Applicant brought the proceedings in the Wellington High Court, he filed fresh proceedings against Messrs VS and VP in the District Court [...]. Without going into the detail of the facts and legal argument, suffice it to say that the District Court Judge concluded that in his view, the "current claim [was] an attempt to relitigate the very issues which were determined in the earlier litigation" (Judgment dated 29 June 2010, para [20]) . He held the claim to be "an abuse of process" and struck it out.

[5] The Applicant appealed to the High Court, which dismissed his appeal in a judgment dated 8 December 2010. During the intervening period, the Applicant sought a review of the Costs Order made against him in the District Court on the basis of issues with the documents presented to the Court by the Respondents Messrs VS and VP.

[6] In a Minute dated 4 October 2010, the District Court Judge reduced the costs by $200 "accept[ing] that there should be some modest reduction in the costs to reflect the errors on the defendants' part". It is these "errors" and some related matters which underpin the Applicant's complaint to the NZLS Complaints Service. The involvement in the 2009 proceedings of Ms VR and Messrs VO and VQ has led to their becoming part of the complaint.

[7] The formal complaints are set out in the Applicant's letter dated 18 January 2011 to the NZLS. In brief, they relate to allegedly defective signing and execution of documents, failing to respond to a letter, failing to rectify "various incomplete actions" and one Respondent allegedly "lying" to the Applicant. The final parts of the complaints relate to Costs Orders and alleged deficiencies in a trust account receipt.

The Standards Committee Determination

[8] In its decision dated 30 June 2011, the Standards Committee summarised the factual background and itemised in considerable detail the complaint, the responses and the replies to those responses. It included in its deliberations a second complaint (received by letter dated 29 March 2011) which alleged that the respondent, Mr VS "did not properly comply with a High Court Order, misled the Registrar and did not have client funds paid into the trust account of the firm acting for the respondents in an appeal".

[9] The Committee decided to take no further action on the complaints pursuant to section 138(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act), giving as its reasons:

> "Court related matters:
>
> 1. The complaints concerning technical deficiencies in the documents raised trivial, minor matters which were raised before the Court and dealt with then.
>
> 2. The decision by Justice Young, whilst acknowledging Mr [VS] acted [for the respondents' but was also one of them], allowed the respondents costs on a Category 2B basis. Paragraph 27 of that decision says that the costs of instructing or attending upon a client cannot be claimed as part of the costs; the costs claimed did not include such a claim.
>
> Bank account/ Receipt matters:
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> 3. The Law Society Inspectorate has confirmed that an over-stamped receipt is acceptable where law practices have merged; the receipt provided is a valid trust account receipt.
>
> 4. The bank account number into which [the Applicant] made his payment in March 2011 is that of the [named] firm, which account was also operated under the previous name of the firm....
>
> The Committee are of the view that the complaints made were vexatious as they appear to be either a continuation of matters raised earlier before the courts or relate to banking and receipt matters that could have been resolved by direct inquiry of the law firm or the Law Society rather than through the complaints process."

It is noted that the legal ground for the Committee's decision to "take no further action" was that the complaints were "vexatious", for the reasons set out immediately above.

Application for Review

[10] In his application for review, dated 30 July 2011, the Applicant concisely states the "supporting reasons" as follows:

> "1) The decision is in error for
>
> (a) Court related matters:
>
> 1. The complaint was not about 'technical deficiencies' or 'trivial, minor matters'. A decision was made to act wrongfully, not correct documents AND [*sic*] pursue costs not properly claimable twice: in the District Court & High Court.
>
> 2. I attach the minute of Clifford J on 11.5.2011.
>
> (b) Bank account.
>
> The issue is a trust account receipt. It is still not certain a trust receipt issued.

2) The 'view that the complaints made are vexatious' is unfounded. It should be withdrawn."

[11] The outcome sought by the Applicant is two-fold: the "withdrawal of the 'vexatious statement'", and "a proper and competent enquiry into the complaints made by [him]". It is noted that the "vexatious statement" is in fact the Committee's finding ("that the complaints made are vexatious") which is based on its conclusions about the details of the complaints, and which provides the legal basis for its decision not to take the complaints further. (See section 138(1)(c) of the Act.) Therefore the review will consider the totality of the complaints, in particular the "supporting reasons" set out in the review application.

[12] Mr VS effectively opposes the application for review (on behalf of his fellow Respondents, as confirmed in their various letters on file) in a letter date-stamped 10 August 2011. His submission was that "the file [would] speak for itself". The principal statement of the Respondents' position is to be found in Mr VS's letter to the NZLS dated 3 March 2011.

[13] He begins by referring to the Applicant's "crusade over the past twenty or so years" and summarises the events which led to the dispute arising over 20 years ago (observing that the Applicant was struck off "in early 1990"). He moves on to the defects in the documents complained about, stating that his understanding was that the District Court Judge declined the offer of his fellow Respondent, Ms VR, to remedy the defects which he submits are "technical" and were "a matter for the Court". He refers to some particular District Courts Rules, advises that the Applicant had still not paid all costs awarded against him and makes the point that, in his opinion, the Applicant has been "waging a campaign" against him and the Respondent Mr VP for over 20 years.

Review

[14] Both parties have consented, pursuant to section 206(2)(b) of the Act, for this matter to be dealt with on the basis of the material before me.

[15] The role of the Legal Complaints Review Officer (LCRO) is to review decisions of Standards Committees. The review includes consideration of how a Committee has dealt with the complaint and whether its decision is soundly based on the evidence and submissions before the Committee. It recognises that Standards Committees are made up of experienced lawyers, together with a non-legally-qualified representative of the community.

[16] I propose firstly to examine the specific complaints, then to consider the section 138(1)(c) finding that the complaints were "vexatious".

[17] The Applicant disputes the Committee's conclusion that the "court related matters" (regarding the documentation issues) were "trivial, minor matters which were raised before the Court and dealt with then", asserting that "a decision was made to act wrongfully, not correct documents and pursue costs not properly claimable twice....".

[18] There is no credible evidence that the Respondents made any decisions to "act wrongfully" as alleged. There were obviously some problems with their District Court papers but these were apparently not serious enough for the judge to adjourn the hearing nor refer to them in his substantive judgment.

[19] In his Minute dated 4 October 2010, arising from the Applicant's memorandum seeking a reduction in the Costs Order, the Judge stated:

> "[1] There is force in [the Applicant's] submission that full costs should not be allowed in respect of the taking of steps which have been incomplete or in breach of rules. It was accepted at the hearing that some matters needed to be attended to. The defects did not in any way go to the merits of the case.
>
> [2] I accept that there should be some modest reduction in the costs to reflect the errors on the defendants' part."

He reduced the Costs Order by $200.

[20] It seems that the Applicant appealed the District Court decision. Judgment was given by Ronald Young J on 8 December 2010. It is a very detailed judgment covering the facts and the relevant law. There is no reference in that High Court judgment to any defects or errors on the defendants' part in the District Court. There is nothing on file to indicate if issue was taken on this point in the High Court but, given the thoroughness of the decision, it seems unlikely that His Honour would not refer to that issue had it been raised or been considered important.

[21] Regarding the Applicant's reference to "pursu[ing] costs not properly claimable twice", the Respondents duly submitted their draft Costs Order; the Applicant opposed the claim which, after judicial consideration, was "modest[ly] reduc[ed]" to reflect the errors in the papers. This was not an improper claim.

[22] The second costs matter arose from the Applicant's unsuccessful appeal against the lower court judgment. Again a 2B award of costs in favour of the respondents, "acknowledging in doing so that the respondents' partnership was represented by one of the lawyer partners, Mr [VS]". The High Court Judge went on to

refer to the legal principle set out in *Brownie Wills v Shrimpton* ([1998] 2 NZLR 320 (CA)) dealing with client and counsel being the same.

[23] The Applicant again disputed the amount claimed but it seems the Registrar sealed the Costs Order regardless, rather than referring the matter to the trial Judge, so the Applicant sought review.

[24] The review came before Clifford J. In his Minute dated 11 May 2011 he set out the Applicant's various submissions, which apparently subsequently included a challenge to the Costs Order itself. After Justice Clifford indicated what he considered would be "an appropriate costs order" both the Applicant and Mr VS consented to a reduced cost award. The Judge was only critical of one aspect of the claimed costs; again in this case there is nothing to suggest an improper claim. Costs awards are often challenged by those ordered to pay costs, and reviewed by trial judges.

[25] Having carefully considered all the materials submitted I conclude that there is no evidence of a decision being "made to act wrongfully", and that the issues with the documents were appropriately handled by the Court itself, as were issues regarding the detail of the Costs Orders and their amounts. Judges do report to the NZLS practitioners whose written and/or verbal contribution to the litigation process is sufficiently defective to require investigation by the Law Society, but in general, and especially for minor errors and deficiencies, the Judges deal with such matters themselves at Court. This is what happened in this case.

[26] As to the complaints listed under 3, (letter dated 18 January 2011) these are effectively issues covered under the Standards Committee heading "Court related matters", and therefore by my conclusions above. The same applies to the "disbursements not claimable" issue which begins complaint 4.

[27] The bank account and trust account receipt issues are ably answered by the Standards Committee. There is nothing before me to challenge the NZLS Inspectorate's view, nor the bank account explanation in the determination. I have found no reason to take a different view to the Standards Committee on any of the specific complaints.

[28] The final matter relates to the Committee's view that the complaints were "vexatious". The Applicant submits that this conclusion is "unfounded". The Committee's stated reason for this conclusion is that the complaints "appear to be either a continuation of matters raised earlier before the courts or relate to banking and

receipt matters that could have been resolved by direct inquiry of the law firm or the Law Society rather than through the complaints process".

[29] The Applicant drew my attention to the case of *Attorney-General v Heenan* [2009] NZAR 763 (HC). This case considered an application by the Attorney-General for an Order against Mr Heenan pursuant to section 88B of the Judicature Act 1908. Section 88B is headed "Restriction on institution of vexatious actions" and provides the High Court with jurisdiction to declare a person a "vexatious litigant" if the relevant principles set out in *Brogden v Attorney-General* [2001] NZAR 809 [21] to [23] are made out.

[30] However here the Standards Committee is not suggesting that the Applicant is a vexatious litigant in the legal sense (as set out in *Heenan*), but rather that his complaints made to the NZLS are vexatious, presumably in the generally understood meaning of the word. "Vexatious" is defined in the Shorter Oxford English Dictionary (5th ed, 2003) as "1. Causing or tending to cause vexation, annoyance or distress; annoying, troublesome. 2. (Law) Of an action: instituted without sufficient grounds for winning purely to cause trouble or annoyance to the defendant."

[31] The Committee based its conclusion on the facts that the complaints either were a "continuation of matters raised earlier before the courts", or could have been resolved with the law firm involved or the Law Society. Looking at the "court related matters" (the more significant issues) there is merit in the Committee's conclusion.

[32] The root of the dispute lies in the consequences of the Applicant's suspension by the Law Society in the late 1980s. He issued High Court proceedings against Messrs VS and VP in 1991, with the judgment being delivered in 1994. This held against him except for a finding that the Respondents "had wrongfully detained computer equipment and furniture and damages were awarded in that respect"; para [5] - judgment of Walker DCJ in CIV-2009-091-662.

[33] The Applicant does not appear to have challenged the Respondent VS's assertion in his response dated 20 March 2011 that "during the 1990s, [the Applicant] continued to lodge various complaints with the Law Society, all to no avail, against [VP] and [himself]."

[34] In 2009, the Applicant issued proceedings in the [...] District Court for what appear to be very similar claims to those made and dismissed in the 1991 High Court proceedings. In striking out the proceeding, Judge Walker stated, at para [22]:

> "My assessment is that this current claim is an attempt to relitigate the dispute between the parties which was ruled on by Greig J in 1994. It is an abuse of process for the plaintiff to attempt to do so and for that reason, the plaintiff's claim is struck out."

[35] The Applicant appealed the District Court judgment to the High Court where the High Court Judge found at para [25] that "the decision and conclusions of the District Court Judge were correct. The appeal is dismissed." (I do not include the Applicant's High Court and District Court applications to review Costs Orders because both were partly successful and are part of the normal litigation process).

[36] Summing up the time and activity involving the Applicant and Messrs VS and VP in particular, there has been the initial High Court claim in 1991, apparently unsuccessful complaints to the Law Society "during the 1990's", the 2009 Porirua District Court proceedings (roundly rejected by the Court), the unsuccessful appeal, and now these complaints. Strictly speaking they relate to issues arising from the Respondents' defence to the 2009 proceedings and subsequent appeal, but the complaints lack of merit is shown by the Committee's specific findings, with which I agree.

[37] The employment relationship between the Applicant and the Respondents VS and VP seems to have begun in or around 1989, well over 20 years ago. The "new proceedings" begun in 2009 were dismissed as an attempt to re-litigate the 1991 monetary matters. Mr VS refers to the Applicant having "wag[ed] a campaign" against the two men for over 20 years, which has required them to "expend large amounts of time and money in defending various proceedings and complaints" (letter dated 3 March 2011).

[38] The on-going proceedings by the Applicant with these issues will have had an inevitable negative effect on these men, their colleagues, especially those now latterly involved as parties, and possibly their families. I am in no doubt that the Applicant's course of action over the past 20 plus years has caused or tended to cause vexation, annoyance or distress to Messrs VS and VP. These current complaints have about them the flavour of action intended, at least in part, to cause trouble or annoyance to the Respondents. Undoubtedly they fulfil the dictionary definition quoted above.

[39] Therefore I must reject the Applicant's request that his actions not be described as "vexatious". I am satisfied firstly that these complaints, both court related and bank account/receipt matters, were "vexatious" as defined, and secondly that the Standards Committee's decision to take no further action is justified on that basis. Accordingly the application for review is declined. Even if my conclusion and that of the Committee

regarding section 138(1)(c) is wrong then section 138(2) would apply in the circumstances.

Decision

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

DATED this 17th day of May 2012

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O W J 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:

LP as the Applicant
VS, VR, VO, VQ and VP as the Respondents
The Wellington Standards Committee 1
The New Zealand Law Society
Secretary for Justice (Redacted)