

CONCERNING

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

AND

CONCERNING

a determination of the Auckland Standards Committee 3

BETWEEN

UC

Applicant

AND

OX

Respondent

DECISION

Introduction

[1] UC applied for a review of the two determinations of Auckland Standards Committee 3 to take no further action in respect of two complaints about OX. The complaints arise firstly from events relating to the role that OX played in promoting new animal welfare legislation and subsequently establishing an approved organisation in terms of the legislation, and secondly in respect of OX's conduct in relation to the various proceedings between the parties.

Background

[2] The history of events arising between the parties was recounted by Allan J in *UC v OX & Ors*.¹ I have incorporated a substantial extract here from that decision by way of background information:²

[17] [UC] and [OX] were formerly colleagues in a voluntary organisation known as the [CCP] Trust. Regrettably, differences emerged between them and there was a falling out. [UC] made inquiries into a trust with which [OX] was involved. He had been instrumental in securing the passage of the Animal Welfare Act 1999. The trust was an approved organisation under the Act, and in that capacity had an arrangement with the [location] City Council for animal

¹*UC v OX & Ors* HC Auckland CIV 2010-404-2050, 25 November 2010.

welfare purposes. [UC] considered that [OX] had been using the trust to advance his own interests.

[18] She in turn formed a competitor Trust. It maintained a website upon which [UC] published certain statements defamatory of [OX]. There were other defamatory comments in e-mails sent to a wide variety of recipients, including those involved in local government, board members of the [CCP] Trust (of which [UC] had formerly been a trustee), and the staff of the animal welfare section of the [location] City Council.

[19] [OX] issued proceedings in the District Court at Auckland. He alleged that certain statements in [UC's] communications or those of her company (the second plaintiff in this proceeding), were to the effect that [OX]:

- a) was dishonest and had taken charitable funds for himself;
- b) had deliberately misled a Minister of the Crown in seeking to have his own trust accepted as an approved organisation;
- c) had misappropriated funds from his own trust;
- d) was corrupt, untruthful and untrustworthy.

[20] There were also allegations of passing off, and of breach of the Fair Trading Act 1996.

[21] The present plaintiffs filed a counterclaim in the District Court. They alleged five causes of action including defamation. The counterclaim ran to 55 pages. Damages of \$250,000 were sought.

[22] In a judgment given on 7 February 2007, Judge Sharp struck out the counterclaim on the basis that none of the causes of action could be sustained.

[23] On 19 March 2007, Judge Sharp delivered a further decision in which an application filed by the present plaintiffs against the present defendants to strike out the District Court defamation proceeding was dismissed. In each judgment, Judge Sharp urged [UC] to obtain legal assistance.

[24] Also on 19 March 2007, Judge Sharp ordered [UC] personally to pay indemnity costs of \$6,806.72 to the counterclaim defendant, the [CCP] Trust, and further directed the present plaintiffs, jointly and severally, to pay the costs of the present defendants, amounting to \$9,000 (a sum in excess of scale).

² Ibid at [17].

[25] On 10 May 2007, in a further judgment, Judge Sharp directed the present plaintiffs to pay scale costs of \$3,200 in relation to the unsuccessful application to strike out the statement of claim.

[26] On 28 June 2007 there was a judicial telephone conference in the course of which the Judge made timetabling directions. The first direction was as follows:

“Within 14 days the defendants [the present plaintiffs], or one of them shall pay in full all outstanding Costs awards payable to the plaintiffs failing which the defendants will be debarred from further defending the claims against them and statement of defence will be struck out.”

[27] The unless order was not the subject of a prior written application; neither was there any reference to it in a memorandum filed by counsel for the plaintiffs for the purpose of the conference. But it is not in dispute that [UC] participated in the telephone conference.

[28] The costs remained unpaid. On 19 July 2007 Judge Sharp made an order (without further argument or appearance) striking out the statement of defence in the defamation proceeding of the present plaintiffs. The minute of Judge Sharp, distributed to the parties by e-mail, read as follows:

“The directions that I made on 29.06.07 were clear: by 13 June 2007 the defendants were to have paid in full the outstanding awards of costs against them in favour of the plaintiffs or their statement of defence would be struck out. The defendants offer no adequate excuse for their failure to comply with that direction. The plaintiffs now seek an order in terms of the direction made.

I can see no reasonable ground not to make one as the defendants’ failure to meet the costs awarded by the due date constitutes an abuse of the process of the Courts.

Accordingly under r 209(c) I strike out the defendants’ statement of defence.”

[29] On 13 March 2008, Judge Joyce QC presided over the trial of the defamation proceeding. It was conducted as a formal proof hearing. The present plaintiffs were entitled to participate in the hearing in respect of quantum and in relation to mitigation, despite the striking out of their statement of defence. In practice, they were permitted substantial latitude and were able to place before the Court a great deal of material. I return to this point below.

[30] Written submissions followed the hearing. They were complete by 16 April 2008.

[3] UC applied for a stay of execution of the various costs awards against her, and for a review of the costs awards themselves. This action had been prompted by the fact that OX had commenced bankruptcy proceedings against her for the unpaid costs.

[4] In his judgment, Judge Joyce dismissed the application at the same time as issuing his substantive defamation judgment in which he awarded general damages of \$50,000 against each of UC and her company (CCQ Ltd), and a further \$7,500 in exemplary damages against UC. He also granted injunctive relief restraining UC from publishing material defamatory of OX.

[5] It is not necessary for the purposes of this review to detail the various Court proceedings by way of appeal and judicial review which ensued but it is to be noted that in each instance UC has been unsuccessful.

The complaints

[6] UC's first complaint against OX started as a complaint to the Serious Fraud Office (SFO) which forwarded it to the New Zealand Law Society Complaints Service after it had come to the conclusion that the information in the complaint did not disclose serious or complex fraud.

[7] In her letter to the SFO UC accused OX of corruption by misuse or abuse of public office for private gain. She alleged that OX had a conflict of interest in that he promoted the animal welfare legislation, was a consultant to the Ministry of Agriculture and Fisheries (MAF) and an independent advisor to the Select Committee which considered the legislation.

[8] She also alleged that the Trust which he established known as CCR was nothing more than a personal trading name for OX who used the income of that Trust for personal purposes. Throughout her complaints, UC frequently referred to the fact that when OX applied for approval of CCR as an approved organisation, the Trust Deed had not been fully executed and that therefore the Trust did not exist or was a fictitious Trust.

[9] UC also complained that OX was responsible for alleged intimidation of her once she had incorporated her own Trust with the same name as that formed by OX.

[10] In January 2011 UC lodged a complaint directly with the New Zealand Law Society Complaints Service about OX and five other lawyers. These complaints related to the Court proceedings in which she and the other lawyers had been involved and she alleged breaches of the Conduct and Client Care Rules.³

³Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

[11] She alleged the following:⁴

1. Misleading the court;
2. Being a party to an attempt to pervert/defeat justice;
3. Using the proceedings for an improper purpose;
4. Assisting in the concealment of fraud;
5. Failing to make a disclosure as required by s 8.4(d) of the rules;
6. Failing to prevent fraud or crime;
7. Failing to treat a self represented person with integrity, respect, and courtesy;
8. Failing to provide an overriding duty to the court;
9. Misleading and deceiving the court;
10. Undermining the process of the court and abusing the court process;
11. Attacking the reputation of another without good cause in documents filed in court proceedings;
12. Alleging reprehensible conduct without taking steps to ensure that reasonable grounds for making the allegation existed;
13. Prevention of discovery;
14. Presenting false evidence;
15. Failing to put all relevant and significant law known to the lawyer before the court, whether this material supports the client's case or not; and
16. Failing to comply with the requirements of a prosecuting lawyer.

[12] UC's complaints all referred to alleged breaches of the Conduct and Client Care Rules but she acknowledges that the initial conduct complained of took place prior to 1 August 2008 (the commencement date of the Lawyers and Conveyancers Act 2006). As a result some of the conduct complained of falls to be considered under the Rules of Professional Conduct which were in place at the time. She noted that she expected the Committee to identify the appropriate Rules in force at the time and address her complaints in the context of those Rules.

[13] Her complaints are premised on the belief that the Courts have unquestioningly believed OX and his counsel "without requiring evidence from them, the presumption having been that they are officers of the Court and their duty is first and foremost to the Court."

⁴Letter from UC to New Zealand Law Society regarding complaint against OX (8 January 2011).

The Standards Committee determinations

[14] With regard to the matters referred to it by the SFO the Committee noted that all of the conduct referred to occurred prior to 1 August 2008. Accordingly, the conduct fell to be considered under the transitional provisions of the Lawyers and Conveyancers Act, and the Committee noted that this:⁵

meant the relevant standards of conduct are those set out in sections 106 and 112 of the Law Practitioners Act 1982, being conduct such that disciplinary proceedings could have been commenced under that Act. Disciplinary proceedings for negligent and incompetent conduct could only be justified if that conduct had been of such a degree or so frequent as to reflect on the practitioner's fitness to practice.

[15] The Committee declined to consider the complaints further as it did not consider that the conduct complained of was such that proceedings of a disciplinary nature could have been commenced against OX.

[16] With regard to the complaint lodged directly by UC, the Committee recorded its deliberations in the following way:⁶

[12] The Committee noted that this complaint canvassed matters that had been dealt with by the District Court, the High Court and by the Court of Appeal. The conduct of [OX] as a barrister, and in representing himself and [CCR] in those courts was not, in the Committee's view, such as to give rise to a finding of unsatisfactory conduct in respect of the conduct that took place after 1 August 2008.

[13] The Committee noted that the matters had been extensively covered in the various judgments provided by [OX] and [UC] and referred to by the both of them.

[14] The Committee further considered [UC's] reasoning for not having made a complaint earlier and her expectation that any prior complaint would have been dismissed by the Standards Committee under section 138(1)(f). The Committee did not consider that the Society's Complaints Service was an appropriate forum for matters which were the substance of prior litigation, albeit with all appeals effectively exhausted, to be revisited.

[17] The outcome of these deliberations was that:⁷

⁵Auckland Standards Committee 3 Determination, 4 July 2011 at [12].

⁶Auckland Standards Committee 3 Determination, 6 July 2011 at [12].

⁷Ibid at [15].

The Committee did not consider that there was any professional standards issues arising as a consequence of [OX's] conduct in this matter and accordingly decided to take no further action in the matter pursuant to sections 138(1)(c) and section 138(2) of the LCAct.

Review

[18] An Applicant only hearing took place in Auckland on 20 November 2012 with UC accompanied by a support person. The purpose of the hearing was to enable UC to ensure that all of the relevant material was noted by me and to enable her to provide a synopsis of her complaints and review applications. OX was not required to attend the hearing and did not exercise his right to do so.

UC's submissions

[19] Following the hearing, UC provided a written summary of her submissions and I include here a substantial portion of these:

- The “success of the attack” on [UC] was “attributed to spin, identity fraud and misleading the Court [which] resulted in a judgment which was obtained in circumstances which had no degree of fairness at all.”
- The Courts place absolute trust in the submissions of lawyers.
- Some of the documents supplied by the lawyers (the lawyers complained about by her, including [OX]) were fabricated.
- That she had filed District Court proceedings to have the judgment overturned and that fraud and perjury on the part of [OX] was specifically pleaded in those proceedings.
- The purpose of restricting representation of companies in Court to barristers and solicitors is because they are subject to professional discipline and therefore the standard of conduct to be expected can be enforced. If the Law Society does not hold lawyers accountable for their conduct and allows them to submit fabricated documents this is an open door to corruption.
- The costs orders against her and [CCQ] Ltd had resulted in bankruptcy proceedings against her and liquidation proceedings against the company and these represent a penalty for questioning corruption in New Zealand.

- The attack on her had been funded using the charitable dollars which have been misappropriated for personal gain by [OX] through the defamation proceedings.
- All other authorities (including the Court) believe that the lawyers are accountable to the Law Society and all authorities leave it to another so that nothing is done.
- The judgment obtained by fraud had been successful in perverting the course of justice as no one wishes to contradict a decision of the Court.
- “How can justice be seen to be done when a person is denied a defence, no evidence is produced, perjury is committed by barristers, and the legal representatives mislead the Court in material ways as to the identity of their client [CCR] and steps in the process are skipped.”
- A breach of section 4 of the Lawyers and Conveyancers Act renders a person liable to imprisonment by reason of section 107 of the Crimes Act and other sections of the Crimes Act are applicable to the actions of [OX] and others.
- There has been no investigation in the light of the evidence supplied by [UC] and an independent investigation is necessary.
- That no lawyer of good standing would think it acceptable to write legislation for their own business plan and to make an application using false information.
- The proceedings against her were conducted without any evidence at all of the alleged wrongdoing and therefore the Court placed significant trust in the lawyers before it.
- Defamation was never proved in any manner or form. This occurred because the lawyers managed to manipulate the system in such a way that
 - (a) No evidence was produced.
 - (b) The Court only saw the lawyer’s interpretation of the words and the words complained of were never seen in context.
 - (c) The defence of truth and honest opinion were struck out by using false claims which brought costs at interlocutory stages. These costs were then used to deny the defence of truth and honest opinion to such an extent that the Court did not even consider the statutory defences.
 - (d) The proceedings skipped the formal proof and went straight to quantum.

(e) Affidavits and mitigation of damages were used as evidence of further defamation, and

(f) The Court was misled at every appeal and judicial review step.

[20] I have recorded UC's submissions and in some detail so that the elements of the matters complained of both to the Standards Committee and to the LCRO are specifically noted.

Comment

[21] The predominant submission made by UC is that because a lawyer has a duty not to mislead the Court,⁸ the Courts do not therefore apply a rigorous (or any) standard of proof to statements made by a lawyer to the Court and abdicate the role of assessing the veracity of those statements to the Law Society disciplinary process. She submits that therefore it is the role of the disciplinary process to examine and investigate the veracity of the statements made by lawyers to the Court.

[22] As a corollary to this, it is clear that she continues in her belief, despite the various Court findings, that her view of OX's actions is correct, and that the only reason the Courts did not find against OX was because they accepted all that was put before them as being correct, relying on the disciplinary process to act as 'policeman' against lawyers making false statements to the Court.

[23] Such a view discounts completely all of the rules of evidence and the ability (and obligation) of the Courts to apply the relevant standards of proof required before evidence is accepted. It is difficult to comment on such a view without being dismissive, but it amounts to an attack on the integrity of the Courts. It is completely without merit and misunderstands the role of the disciplinary process.

[24] The disciplinary process has no part to play in Court proceedings. Judgments are made by the presiding Judge as to the strength of the evidence before the Court and he or she will assess that evidence against the Rules of Evidence applicable to the proceedings before it. Rights of appeal exist for those parties who consider that the Court has made an error in its assessment of the evidence or made an error of law. In addition, where evidence can be adduced that statements made, or evidence before the Court, was not correct, then various remedies enable the new evidence to be put before the Court. If, in that process, it is shown that a lawyer has breached the Conduct and Client Care Rules, then without question, it is properly the role of the disciplinary process to act accordingly

⁸Rule 13.1 Conduct and Client Care Rules.

against that lawyer. However, it is not the role of the disciplinary process to be the primary decision maker as to the matters under examination.

[25] UC has put the issues which she has raised before the Court on many occasions before the Standards Committee and this Office. Her complaints to the Complaints Service arise from the fact that she does not accept the decisions of the Courts. Instead she maintains that her views as expressed in her submissions to this Office are correct.

[26] In this way she therefore seeks that the Standards Committee and myself examine and investigate the material put before the Court, specifically in the defamation proceedings brought against her and CCQ Ltd by OX.

[27] One of the main issues that she seizes on relates to the CCR Trust Deed. At the time that OX made the application for CCR to become an approved organisation, the Trust Deed had not been fully executed. UC goes so far as to say that because she subsequently incorporated another Trust under the provisions of the Charitable Trusts Act with the same name, that therefore the Trust established by OX did not exist.

[28] That is clearly a matter of law and OX had discussions with MAF as to whether or not it was necessary to incorporate to become an approved organisation.

[29] It is not correct for UC to assert that this issue was not addressed by the Court. Judge Joyce specifically addressed the issue at [239] to [247] of his judgment. He states:⁹

I do not propose to rehearse the already-made-obvious misapprehensions or misconceptions under which [UC] has laboured as regards the requisites for the creation of a Trust.

I simply note - so as to illustrate one misapprehension - that although (and presumably because of her fixation about things being in writing) [UC] does not think so, a trust can, of course, be created orally; unless, that is (which is not identified to be the case here), there is some particular obstruction to that informal course.

[30] Again, it is not correct for UC to assert that “defamation was never proved in any manner or form.”¹⁰ The hearing before Judge Joyce proceeded as a formal proof and the Court is bound to apply the same rules of evidence and proof as in any other proceeding. If it did not, then UC had a right of appeal, which she exercised in a number of proceedings. Indeed, Judge Joyce commented that:¹¹

⁹ *OX v UC* DC Auckland CIV 2006-004-1784, 30 July 2008 at [239].

¹⁰ UC’s submissions to LCRO (21 November 2012).

¹¹ *OX v UC* DC Auckland CIV 2006-004-1784, 30 July 2008 at [45].

In that process, and as a matter of fact, [UC] was actually able to give, or allude to, all of the evidence she apparently had that might have been adduced at a defended hearing - although, of course, she could not run her originally pleaded defences as such.

[31] If UC did not challenge affidavit evidence in Court then the Court was entitled to rely upon that evidence. It is not the role of the disciplinary process to then somehow review all of the evidence and pronounce again on the veracity of the evidence. That view would elevate the role of the disciplinary process to one of oversight of the Courts. It is a view that is so dismissive of the Courts that it is difficult to respond to.

[32] This application for review has similarities to the review application which was the subject of judicial review in *Siemer v LCRO & Collins*.¹² In that case, Mr Siemer had lodged a complaint with the New Zealand Law Society Complaints Service about the conduct of Dr Collins QC about Dr Collins' role in proceedings brought against Mr Siemer. In its determination, the Standards Committee made the following comments:

It is not part of our role in the complaints jurisdiction to enter into a detailed examination of a case like this, for the purpose of identifying possible errors or misjudgements by a law officer in the position of Dr Collins QC. Unless there was some compelling evidence of bad faith, including such matters as the deliberate falsification of evidence or the pursuit of the application for improper motives, we do not consider it appropriate for us to re-litigate matters which have already passed the scrutiny of the Courts.

[33] On review, the LCRO confirmed the determination of the Standards Committee. Allan J upheld this decision, and at [51] of his judgment noted:¹³

In my opinion, the LCRO was right (as was the Standards Committee) to decline to consider Mr Siemer's complaint, because to do so would necessarily entail the relitigation of matters already considered by this Court.

[34] Elsewhere in his judgment¹⁴ he referred to Mr Siemer's review application as a "collateral challenge to the judgment itself, and constitutes an abuse of process."

[35] Those comments could equally be made about UC's review application.

[36] Notwithstanding these comments, the short point for this review, is that UC's remedies lie with the Courts. That is recognised in the Lawyers and Conveyancers Act which provides that a Standards Committee (or the LCRO) may determine to take no

¹² *Siemer v LCRO & Collins* HC Auckland CIV-2010-404-986, 25 February 2011.

¹³ *Ibid* at [51].

¹⁴ *Ibid* at [48].

further action in respect of a complaint where there is an adequate remedy that would be reasonable for an aggrieved person to exercise.¹⁵

[37] UC has exercised all of the remedies available to her but cannot accept that her view is anything other than correct. Affidavit evidence is evidence which is properly challenged in Court and if it is not, then it is open to the Court to accept it from any deponent, whether they are a lawyer or not.

[38] It is the role of the criminal system or the Courts to address any complaints of perjury. Much of what UC relies upon to support her view as to the legitimacy of the Trust and other statements, rests on a view that was not accepted by the Courts. Nevertheless, all of that material was included in UC's complaints.

[39] UC submits that this Office should assume a role beyond what is provided in the Lawyers and Conveyancers Act. At the review hearing she and her supporter made a plea for me to assume the role of some sort of watchdog against institutional corruption. She called for an independent commission against corruption and said that she has nowhere else to turn to other than this Office.

[40] The LCRO is a statutory Office created by the Lawyers and Conveyancers Act. It exists to review any or all aspects of an investigation and determination by a Standards Committee.¹⁶ The Review Officer must reach his or her own independent decision after examining all of the evidence before him or her but that is the extent of the role of this Office. It cannot act as some sort of independent body which scrutinises evidence and proceedings before the Court.

[41] The majority of the issues raised by UC have been aired before the Courts and in some cases before several Courts. To her overall detriment, UC has not accepted the Court decisions. She identifies herself as being a whistle-blower. Others will view her differently. All of that is immaterial to this review.

[42] As noted previously, some of the conduct complained of took place prior to the commencement of the Conduct and Client Care Rules. I have not cross-referenced these Rules to the equivalent Rules of Professional Conduct, but from what is available to me, it is clear that all of the issues raised by UC relate to matters that were put before the Court. I note, for example that OX, through OW, is accused of attacking UC's character as a lay litigant. Judges often comment on the actions of counsel when they perceive improper behaviour, but Judge Joyce did not see the need to do so with regard to this or any of the other matters complained of. The material provided by UC does not show any degree of

¹⁵ Lawyers and Conveyancers Act 2006 s 138(1)(f).

¹⁶ Ibid at s 203.

behaviour towards her that was not warranted in the context of her conduct and the proceedings before the Court.

[43] Having considered all of the material before me, I have reached the same view as the Standards Committee and accordingly its determination is confirmed.

Decision

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

DATED this 11th day of March 2013

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:

UC as the Applicant
OX as the Respondent
The Auckland Standards Committee 3
The New Zealand Law Society