

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the Standards Committee

**BETWEEN**

**XX**

Applicant

**AND**

**UW**

Respondent

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

**DECISION**

**Introduction**

[1] Mr XX has applied for a review of a decision by Standards Committee, in which the Committee decided Mr XX's complaint about Mr UW's conduct was vexatious, and that further action in respect of it was unnecessary or inappropriate pursuant to s 138(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act).

**Background**

[2] Mr UW was engaged to act as an expert witness by lawyers who had acted for Mr XX in relationship property proceedings. Mr XX had refused to pay the lawyers' fees, saying they had overcharged, and the lawyers took steps to recover their fees through the District Court. Mr UW provided a "will say statement" in the course of that proceeding. The integrity of the opinions Mr UW expressed in that document are at the centre of Mr XX's complaint.

### **Standards Committee**

[3] The Committee considered Mr XX's concern was that Mr UW had provided a flawed assessment of fees charged to Mr XX by the lawyers who had acted for him in relationship property proceeding. The Committee determined the complaint on the basis that further action was unnecessary or inappropriate pursuant to s 138(1)(c) because it did not consider the complaint raised any disciplinary concerns and was vexatious.

[4] Mr XX was dissatisfied with the decision and applied for a review.

### **Application for review**

[5] Mr XX complains that he has been the victim of systemic problems with the way lawyers in New Zealand charge for their fees. He considers Mr UW, and all lawyers who charge excessively, are complicit in defrauding their clients. He says the Committee failed to grasp his real complaint, including that Mr UW had conjured up evidence in support of the fees the lawyers had claimed, and asks that the decision be reviewed. Mr XX says the fees are both unsupported and unsupportable.

### **Role of LCRO on Review**

[6] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.

### **Scope of Review**

[7] The LCRO has broad powers to conduct her own investigations, including the power to exercise for that purpose all the powers of a Standards Committee or an investigator, and seek and receive evidence. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review and the extent of the investigations necessary to conduct that review.

### **Review Hearing**

[8] Mr XX attended a review hearing in [City] on 25 May 2015. Mr UW was not required to attend, and the hearing proceeded in his absence.

**Review Issue**

[9] The key issue on review is whether there is good reason to depart from the Committee's decision that further action was unnecessary or inappropriate. That decision is confirmed for the reasons discussed below.

**Discussion**

[10] Mr UW was engaged as an expert witness to give evidence in a Court proceeding as to the reasonableness of the fees the lawyers had charged for services they said they had provided to Mr XX.

[11] For Mr UW's conduct to fall within the definition of unsatisfactory conduct under s 12(a) or (b) of the Act, the conduct must have occurred at a time when a lawyer is providing regulated services. The term "regulated services" is defined in the Act. The provision of expert evidence does not fit within the definition.

[12] For conduct to fall within the definition of unsatisfactory conduct under s 12(c) of the Act, the conduct would have to contravene either the Act, Regulations or Practice Rules made under the Act that apply to Mr UW, or another Act relating to the provision of regulated services. There is no evidence of any contravention by Mr UW of any of the provisions of the Act, any of the regulations or practice rules made under it that apply to Mr UW or any other act relating to the provision of regulated services.

[13] As Mr UW was not providing regulated services to Mr XX, and there is no evidence of him having contravened the Act, Regulations or Practice Rules, his conduct cannot be found to be unsatisfactory pursuant to s 12(a), (b) or (c).

[14] Mr XX says Mr UW's conduct is far more serious, alleging his evidence to be fraudulent. Fraud is a criminal offence, over which this Office has no jurisdiction.

[15] I am not aware of any statutory or regulatory bar on Mr UW forming an opinion on the reasonableness of the lawyers' fees. The fact that Mr XX disagrees with his opinion and believes the fees are unsupportable, does not constitute a disciplinary matter in the circumstances Mr XX describes.

[16] Having carefully considered all of the material that is available in the course of this review, I have been unable to identify any good reason to depart from the Committee's decision that further action is unnecessary and inappropriate.

### *Vexatious*

[17] The Committee also formed the view that Mr XX's complaint was vexatious. I have considered whether the Committee had good reason to find that Mr XX's complaint was vexatious. The same question was considered by the LCRO in LCRO 112/2013. The LCRO in that case said that:<sup>1</sup>

Whether a complaint is vexatious in nature is a substantially different question from whether the complainant is vexatious...the issue is not whether there has been a persistent abuse of the right of access to the adjudicative procedure, but whether the complaint itself is vexatious in nature.

[18] The LCRO reviewed a number of authorities, and formed the view that:<sup>2</sup>

...the test of whether a complaint is vexatious must be fundamentally objective and cannot depend upon the motive or belief of the person bringing the complaint. It is clear that a vexatious complaint may be made by a person who mistakenly thinks that it has a good prospect of being upheld and it may be brought for a proper, if misplaced, motive.

[19] The LCRO identified as the key ingredients in a vexatious complaint:<sup>3</sup>

...no realistic prospect of success and the effect of the further investigation of the complaint would be unnecessarily troublesome or cause vexation, annoyance or distress to the party responding to the complaint. In short, a proper approach is to see a vexatious complaint as one that is instituted without sufficient ground, has no real prospect of success and serves only to cause annoyance. That this is the proper approach is indicated by the fact that want of good faith is an alternative basis for dismissing a complaint under s 138(1)(c).

[20] The Committee's view in the present case was that Mr XX had no valid grounds on which to make a complaint against Mr UW, but rather that he had "targeted Mr UW simply because he has been engaged as an expert witness to provide evidence in court proceedings issued against Mr XX for the recovery of outstanding legal fees".<sup>4</sup> The Committee also found "absolutely nothing to suggest that Mr UW has acted in a way which would give rise to any conduct issues",<sup>5</sup> noting that Mr UW's evidence had only reached the point of being a "will say" statement, prepared in the course of the proceeding.

[21] Although Mr XX considers his complaint should be upheld, in all the circumstances, he is mistaken in that view. The Act is not aimed at regulating the conduct of witnesses appearing before Courts. That is the capacity in which Mr UW's conduct in giving his opinion occurred. Having considered all of the material available

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<sup>1</sup> Unpublished decision, LCRO 112/2013 at [61].

<sup>2</sup> At [65].

<sup>3</sup> At [66].

<sup>4</sup> Standards Committee Decision dated 18 July 2014 at [19].

<sup>5</sup> At [20].

on review, including Mr XX's evidence at the review hearing, I cannot avoid the view that Mr XX's complaint had no realistic prospect of success. Given Mr UW was not acting as counsel in the proceeding, but as a witness, it is likely that further investigation of a complaint made under the Act would unnecessarily trouble him, or cause vexation, annoyance or distress to the him.

[22] In the circumstances, that aspect of the decision is also confirmed on review.

### **Decision**

Pursuant to s 211(1)(a) the decision of the Standards Committee is confirmed.

**DATED** this 12<sup>th</sup> day of June 2015

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**D Thresher**  
**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 XX as the Applicant  
Mr UW as the Respondent  
Mr AP as the Representative for the Respondent  
Standards Committee  
The New Zealand Law Society  
Secretary for Justice