

CONCERNING

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

AND

CONCERNING

a determination of [City] Standards Committee [X]

BETWEEN

WD

Applicant

AND

KG

Respondent

DECISION

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

Introduction

[1] The applicant Mr WD has applied for a review of the decision by [City] Standards Committee [X] to take no further action in respect of his complaints concerning the conduct of Mr KG.

Background

[2] In May 2013, Mr WD and his wife instructed Mr KG with regard to matters arising out of disputes with the landlord of their business premises.

[3] Mr KG carried out some work for Mr and Mrs WD but in July 2013 Mr WD contacted a barrister (Mr YR) directly and asked him to carry on the work that Mr KG had been doing. Mr KG agreed to remain the solicitor on the record but received no further communications from Mr WD.

[4] On 25 March 2014, Mr YR sent an email to Mr KG advising him that Mr WD was going to represent himself, and that Mr KG should withdraw as solicitor on the record. Mr YR advised that he intended to withdraw as counsel.¹

[5] Mr KG acted on Mr YR's advice and sought (and was granted) leave of the court to withdraw.

The complaint

[6] Mr WD's complaint was that "Mr KG didn't complete the work and then terminated the retainer".²

[7] In response Mr KG confirmed the facts as summarised above. He said:³

Mr [WD] terminated his retainer and ... we were instructed to withdraw from acting for him This was communicated to us by Mr YR who was the person having direct communication and receiving instructions directly from Mr [WD] for these purposes. Mr [WD] took no steps to rectify the memorandum seeking leave to withdraw at the time that it was filed, served and copied to him.

[8] He sought a refund of fees paid to Mr KG.

The Standards Committee decision

[9] The Standards Committee identified the main issue as being whether Mr KG had failed to complete and improperly terminated the retainer and determined to take no further action in respect of the complaint.⁴

[10] It concluded that Mr KG was entitled to rely on Mr YR's email advising Mr KG to withdraw. It went on to record that in the circumstances "it could not therefore be said that Mr KG had failed to complete and/or improperly terminated the retainer".⁵

[11] The Committee also observed there was nothing in the material supplied by Mr and Mrs WD to raise complaints about Mr KG's fees.

¹ YR email to CZ [ABC Law] (25 March 2013).

² Lawyers Complaints Service file "Telephone Note" (15 October 2014).

³ Letter KG to Lawyers Complaints Service (25 November 2014).

⁴ Standards Committee decision at [5].

⁵ At [8].

The application for review

[12] The grounds put forward by Mr WD in support of the submission that the Standards Committee's decision should be reversed are as follows:

- (a) Committee failed to follow legal processes stipulated in the Act.
- (b) Committee failed to follow fundamental obligations.
- (c) Committee failed procedural fairness, and act as counsel on behalf of lawyers.
- (d) Committee failed procedural fairness and natural justice and perverted the course of natural justice.
- (e) Committee failed procedural [sic] of the Human Rights Act. And had based the decision on discrimination and racism.

[13] He then repeated, and added to his complaints:

- (a) Lawyer failed to act competently.
- (b) Lawyer failed to act in a timely manner, in accordance with instructions.
- (c) Lawyer failed to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients.
- (d) Lawyer failed to discuss his objectives and how those objectives were to be achieved.
- (e) Lawyer failed to provide information about the services to be provided.
- (f) Lawyer failed to act with instructions, and with his advice.
- (g) Lawyer failed to communicate in a respectful manner.
- (h) Lawyer failed to protect and promote our interests.
- (i) Lawyer failed to provide information about the progress of the case.
- (j) Lawyer failed to provide necessary support to find another lawyer.
- (k) Lawyer failed to provide information as to how to pursue a complaint.

- (l) Lawyer failed to communicate effectively.

Nature and scope of review

[14] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:⁶

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or 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. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[15] More recently, the High Court has described a review by this Office in the following way:⁷

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO’s own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee’s determination.

[16] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee’s determination, has been to:

- (a) Consider all of the available material afresh, including the Committee’s decision; and
- (b) Provide an independent opinion based on those materials.

⁶ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

⁷ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

The procedure on review

[17] Following an initial consideration of the application for review, the supporting material, and the Standards Committee file⁸ the Legal Complaints Review Officer (LCRO) directed that the review should proceed by way of a hearing with both parties.

[18] On 13 November 2015 Mr WD provided a copy of a notification from the Disputes Tribunal that “both claims to be enlarged pending LCRO outcome.”⁹ It was apparent from this letter that Disputes Tribunal proceedings relating to the same matter had been filed. No information has been provided about these proceedings and they have no relevance to complaints that Mr KG has breached professional standards.

[19] In February 2016 Mr WD asked that this review be afforded priority.¹⁰

[20] Following a further consideration of the material in 2016, the Review Officer issued a minute which included the following paragraphs:¹¹

[5] From a preliminary review of the material provided, it is difficult to establish how Mr and Mrs WD have been prejudiced by the conduct complained about. In addition, I have not identified anything in the material provided following a preliminary review, that would indicate the determination of the Standards Committee should be altered.

[6] There is no apparent reason why this application should be afforded priority and if Mr WD wishes the Disputes Tribunal proceedings to continue more quickly, it is suggested he give consideration to withdrawing the application for review.

[21] The application for review was not withdrawn, and in October 2016 Mr WD provided a “Complete statement for LCRO hearing” which was forwarded to Mr KG.

[22] No further comment was received from Mr KG and in November 2016 this Office requested consent from both parties for the review to be completed on the material to hand. Both parties provided their consent and the reviews were then scheduled for completion on the papers.¹²

[23] On 27 February 2017 this Office received a document headed “Memorandum of Applicants withdrawing consent for the LCRO to hear matters between the parties on the papers.” That document included the following paragraphs:

⁸ Mr KG advised by letter 17 September 2015 that he did not wish to add anything to what had already been provided.

⁹ Letter Disputes Tribunal to WD copied to ABC Law (12 October 2015).

¹⁰ Email WD to Legal Complaints Review Officer (26 February 2016).

¹¹ Minute 29 April 2016.

¹² Email WD to LCRO (18 November 2016); Letter KG to LCRO (8 December 2016).

2. New information has come to light since the aforementioned consent was given by the applicants.

3. In view of the above the applicants respectfully withdraw their consent to having the LCRO hear matters between parties on the papers.

[24] Unfortunately, this memorandum was not drawn to the attention of the Review Officer until June 2017. At that stage the Review Officer requested Mr WD to advise:¹³

1. The nature of the information.
2. Why it was not made available to the Standards Committee.
3. Why the information cannot be made available in written form to the Review Officer.

[25] In response, Mr WD advised that the new information related to a breach of the High Court Rules and was before the Standards Committee.¹⁴

[26] As the information Mr WD referred to was not “new information” and was on the Standards Committee file it is therefore available for consideration on review.¹⁵ Mr WD was advised that his withdrawal of consent to the review being completed on the papers was not accepted and the review has been completed on the papers on the basis of the initial consent provided by Mr WD.¹⁶

Review

Standards Committee procedure

[27] Mr WD has not addressed each of the allegations made about the Committee’s procedures. Under the heading “How the Committee made the decisions” he has made the following statements:¹⁷

- (a) The “committee acted as counsel on behalf of lawyers”.¹⁸
- (b) “... our complaint wasn’t related to pro bono, volunteered or free work at all.”¹⁹

¹³ Email LCRO to WD (8 June 2017).

¹⁴ Email WD to LCRO (12 June 2017).

¹⁵ Mr WD was also advised that good reason must be provided before the LCRO will consider new information.

¹⁶ Email LCRO to WD (8 June 2017).

¹⁷ Complete statement for LCRO hearing.

¹⁸ At [1].

¹⁹ At [1].

- (c) The committee not in a position to act in [sic] behalf of lawyers. Rather judging on lawyers provided pro bono work or not. But must committee determine are lawyers had breach RCCC rules?"²⁰
- (d) "The committee had narrowed the decisions on the withdrawal. And ignored all other breaches of the rules."²¹
- (e) "I'll start my statement with the (P7) of the Standards Committee decision Mr KG. This will prove ... decision ... was based on wrong foundation. Perhaps committee they are perverting the course of justice."²²

[28] All of Mr WD's comments, which are apparently in support of the allegations of procedural breaches by the Committee, are in a similar vein. There is nothing which provides any substance to the wide ranging allegations and accordingly there are no grounds to reverse or modify the Standards Committee decision for procedural reasons.

The scope of review

[29] The Standards Committee noted in its determination that "the precise nature of the complaint made by Mr and Mrs WD was hard to discern from the material provided by the parties".²³ The same is true of the application by Mr WD for review of the Standards Committee determination.

[30] From the information provided, the Committee identified a single issue raised by Mr WD about Mr KG. This was confirmed by him in a telephone conversation between the Lawyers Complaints Service investigating solicitor and Mr WD as being that Mr KG terminated his retainer without completing what he had been engaged to do.

[31] Mr WD instructed Mr YR directly to act for him and his wife in proceedings against his former lawyers, and to help negotiate and resolve bankruptcy proceedings which had been issued against them.

[32] Mr KG agreed to remain as Mr YR's instructing solicitor, having initially been engaged by Mr and Mrs WD to act on their behalf in respect of the same matters.

²⁰ At [1].

²¹ At [3].

²² At [3].

²³ At [6].

[33] No new matters may be raised on review and for that reason many of the issues raised by Mr WD in his review application, and in his subsequent submissions, will not be addressed. If they are not referred to in this decision it does not mean they have not been noted.

The termination of the retainer

[34] Having reviewed all of the material before the Standards Committee and provided to this Office, I can find nothing to support Mr WD's complaint that Mr KG terminated the retainer without cause.

[35] Mr WD instructed Mr KG in May 2013 and a letter of engagement was issued. Mr KG provided legal services to Mr and Mrs WD until mid-July 2013 and during that time rendered two invoices.

[36] In mid-July 2013 Mr WD approached Mr YR directly and requested that he continue to act for him and his wife. The arrangement between Mr KG and Mr YR was that ABC Law would remain as solicitor on the record. This arrangement is not unusual and is commonly referred to as a "reverse brief". That describes the situation where a barrister arranges for an instructing solicitor for the client. It is not unlawful as Mr WD seems to suggest.

[37] It is somewhat unusual that there was no direct communication between Mr KG and Mr and Mrs WD thereafter; the role of an instructing solicitor does require direct engagement between client and solicitor.

[38] However, there is no substance to the complaint against Mr KG that he terminated the retainer without cause for the single reason alone that it was in order for him to rely upon the advice from Mr YR that Mr WD was intending to act for himself.

[39] If Mr YR had misinterpreted the situation, Mr WD had the opportunity to correct that misunderstanding. ABC Law wrote to him on 9 April 2014 to advise they were intending to seek leave of the Court to withdraw. The memorandum whereby leave of the Court was sought was also served on Mr WD. Finally, the Court granted leave for Mr KG to be removed as solicitor on the record.

[40] In summary the complaint that Mr KG did not complete his retainer is not able to be sustained.

Decision

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

DATED this 6th day of July 2017

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 WD as the Applicant
Mr KG as the Respondent
Mr JM as a related person
[City] Standards Committee [X]
New Zealand Law Society