

**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 2

**BETWEEN**

**Mr BB**  
of Wellington  
Applicant

**AND**

**Mr YU**  
of Wellington  
Respondent

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

**DECISION**

**Background**

[1] In 2009 Mr BB (the Applicant) approached Mr YU (the Respondent) with a request for the Respondent to act on his behalf to recover legal costs incurred for what the Applicant regarded as unsatisfactory advice provided by several lawyers relating to a fencing dispute.

[2] In 2003 the Disputes Tribunal had declined jurisdiction in respect of a dispute that the Applicant was having with his neighbour. The Applicant and his neighbour were the owners of cross lease properties, and although I have not sighted a copy of the Disputes Tribunal decision, I discern that the Tribunal declined jurisdiction on the grounds that the cross lease required any disputes to be determined by arbitration. Nothing turns on that assumption if it is incorrect.

[3] Following that decision, the Applicant consulted several different lawyers in an attempt to resolve the dispute, none of whom managed to effect a satisfactory outcome.

[4] It was not until June 2005 that the Applicant's then lawyer pointed out that the Disputes Tribunal did have jurisdiction by reason of s16(2) of the Disputes Tribunals Act 1988.

[5] In the meantime, the Applicant had incurred legal fees totalling approximately \$9,600 through alternative attempts to resolve the problem and it was in this regard that he approached the Respondent for assistance.

[6] However, the Respondent was unable to progress the matter and after a period of some five months the Applicant retrieved his files.

### **Complaint**

[7] The complaint lodged by the Applicant with the Lawyers Complaints Service traverses a wide range of matters with which the Applicant was unhappy, and centre on the fact that he had consulted a number of lawyers to assist him, none of whom had managed to achieve a favourable result.

[8] The complaint against the Respondent was that the Respondent had not taken any steps in connection with the Applicant's file for a period of five months.

[9] In response to the complaint, the Respondent advised that the Applicant was incorrect when he stated that the Respondent had assured him that he would represent him in Court in connection with the matter. The reason for this was that the Respondent had not practised in the area of civil litigation in the District Court for some considerable time.

[10] The Respondent advises that he did, however, agree to discuss the matter with the Chief District Court Judge with whom the Applicant had corresponded, as the Judge was known personally to the Respondent. However, an appropriate time for him to do so had not arisen and consequently he had been unable to progress matters on behalf of the Applicant. He made no charge for the time that he had spent reviewing the file and discussing it with the Applicant.

[11] The Standards Committee determined to take no further action in connection with the matter pursuant to s138(2) of the Lawyers and Conveyancers Act 2006 for the following reasons:-

- while the Committee sympathised with the Applicant's predicament it noted that the Respondent says he did not agree to act for the Applicant and it is unlikely that he would have agreed to represent him in Court as he is not a litigator;

- the Respondent offered to contact Judge Carruthers on an informal basis. There is no obvious way in which the Judge could assist and it appeared to be an effort to assist informally;
- the fact that the Respondent did not meet up with Judge Carruthers on a social basis as he had expected to is not something for which he can be criticised;
- the Respondent did not charge the Applicant for the time spent with him;
- there is nothing to substantiate the allegation that the Respondent, let alone all of the legal profession, had declared the Applicant “black”;
- in all of the circumstances, no further action was necessary or appropriate.

[12] The Applicant has applied for that decision to be reviewed.

### **Review**

[13] This complaint arises through what would appear to be a misunderstanding between the parties as to what the Respondent had agreed to do for the Applicant.

[14] The Applicant categorises the inaction of the Respondent as “delaying tactics” and part of an overall agreement between lawyers to “blacklist” him. This perception arises from his experience with the Community Law Centre where he was unable to obtain an appointment for three months, and then received advice from the manager that he would have difficulty in obtaining a lawyer. He considers this is because he has been “black listed” by the profession. However, I would observe that the action he was wishing to instigate involved issuing negligence proceedings against several solicitors, who had charged total fees of \$9,600. While this is not an insignificant amount, it would be totally uneconomic to commence negligence proceedings against several solicitors for this sum in total. This in itself, could explain the manager’s comment.

[15] The initial meeting between the parties was to enable the Respondent to ascertain what it was that the Applicant required to be done. The Respondent says he gave no assurance to the Applicant that he would represent him in connection with the matter, predominantly because he had not practised in the area of civil litigation in the District Court for some time.

[16] The Respondent does say, however, that because of a connection between the Applicant and the Respondent’s late father, he agreed to have a look at the material

provided to him and to discuss the matter with the Chief District Court Judge with whom the Applicant had corresponded and who the Respondent knew personally.

[17] At that stage, the Respondent contemplated that he would meet the Chief District Court Judge in circumstances that would allow him to ascertain what the Judge knew about the matter. However, as matters turned out, an appropriate occasion at which the Applicant's affairs could be discussed had not arisen, and at the time of responding to the complaint, the Respondent had still not been able to discuss the matter with the Judge.

[18] There is support for the Respondent's contention that he agreed only to discuss the matter with the Judge provided in the Applicant's response of 22 August 2010 to the Standards Committee determination, where he states that the Respondent "said he would call on Judge Carruthers within two weeks. I called at his office a few weeks after and he had not seen Judge Carruthers then." This indicates that the Respondent had not agreed to do anything more than this.

[19] In his final meeting with the Applicant, the Respondent says he advised him that it would be an almost insurmountable exercise to achieve what he was seeking. I cannot help but agree with this advice. It would be a totally uneconomic exercise to embark on this process which would only have added to the disappointments experienced by the Applicant up to that time.

[20] It must be emphasised, that despite the wide-ranging nature of the information provided in the complaint, this review concerns a complaint against the Respondent only for not taking any action in respect of the Applicant's affairs for a space of five months.

[21] In reviewing the information provided, I am drawn to the conclusion that the Respondent did not agree to do anything more than he says he did, for the simple reason that he had not practised in civil litigation in the District Court for many years. Rule 4.1 of the Client Care Rules provides that "good cause to refuse to accept instructions includes...the instructions falling outside the lawyer's normal field of practice...". Consequently, the Respondent would have been justified in declining to act for the Applicant, and would not have been encouraged to accept instructions in a matter which was clearly going to be difficult and uneconomic.

[22] That the Respondent was unable to achieve anything positive for the Applicant came about because he did not meet up with the Chief District Court Judge at an

appropriate time and was consequently unable to advance the matter. He cannot be criticised for this in any way.

**Decision**

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

**DATED** this 31<sup>st</sup> day of March 2011

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Owen 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:

Mr BB as the Applicant  
Mr YU as the Respondent  
The Wellington Standards Committee 2  
The New Zealand Law Society