

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2020] NZLCRO 67

Ref: LCRO 188/2019

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee [X]

BETWEEN

QK

Applicant

AND

RJ

Respondent

DECISION

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

Introduction

[1] Ms QK has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) to take no further action in respect of her complaint concerning conduct on the part of [law firm] (the firm) and Mr RJ, who is a consultant at the firm.

Background

[2] The firm acted for Ms QK's mother for thirty-plus years. She passed away in August 2019, having retained the firm to assist her in making a will three months earlier.

[3] A law clerk at the firm sent a template letter to Ms QK's brother [M] on 22 August 2019. That letter advised [M] that the firm held a will his mother had recently made, in which she named him and his sister [Z] as her executors and trustees. Mr RJ was

identified as the solicitor who would primarily be responsible for the administration of the estate.

[4] At some point, Ms QK instructed Mr YG to act for her. She obtained a copy of the will from [M] on 23 August 2019, and instructed Mr YG to open communications directly with the executors. Mr YG wrote directly to [M] and “the other executors” on 6 September 2019, notifying them that Ms QK intended to make a claim for an increased share of estate property under the Family Protection Act 1955 (the claim).

[5] Mr YG followed up with a letter to the firm on 10 September 2019, a copy of which he sent to [M], [Z] and Ms QK. The firm replied to Mr YG’s letter on or about 27 September 2019. That letter crossed with Ms QK’s undated complaint to the New Zealand Law Society (NZLS) that was sent on 26 September 2019.

The complaint and the Standards Committee decision

[6] Ms QK says the firm (incorrectly described by Ms QK as the Executors) refused to provide her with a copy of her mother’s will and did not answer or acknowledge Mr YG’s letters of 6 and 10 September 2019. Ms QK’s complaint concludes:

I would appreciate your intervention so my position may be protected.

[7] In a letter dated 14 October 2019, Ms QK asked NZLS’ Complaints Service for confirmation that her complaint had been received. She was told it had been. Ms QK was invited to provide a copy of the will, and to identify the lawyer whose professional conduct was the subject of her complaint. Ms QK identified Mr RJ as “the lawyer Of my late mother and dealing with her estate” at the firm, and forwarded an email [M] had sent her on 23 August 2019 attaching a copy of their mother’s will.

[8] On 23 October 2019, the Standards Committee accepted Ms QK’s complaint as suitable for determination through the NZLS’ Early Resolution Process.

[9] The Complaints Service contacted Mr RJ by phone on 3 December 2019. He provided a copy of his letter of 27 September 2019, and did not otherwise offer a substantive response.

[10] On 4 December 2019, the Complaints Service sent a copy of Mr RJ’s 27 September 2019 letter to Mr YG, and Ms QK contacted the Complaints Service again the next day. She wanted NZLS to tell her if probate had been granted, repeated and expanded on her criticisms of the firm, again incorrectly described “as Executors”, and gave examples of other actions by the executors to support her complaint about conduct

on the part of Mr RJ. Ms QK expressed a desire for a “response and urgent attention to the above matters”.

[11] On 13 December 2019, the Committee decided further action on Ms QK’s complaint regarding conduct on the part of Mr RJ was not necessary or appropriate. It determined Ms QK’s complaint accordingly pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[12] The decision records at paragraph 8 that probate had been granted. Although that appears to have been confirmed in conversation between Mr RJ and whoever he spoke to at the Complaints Service, that is not what Mr RJ’s letter of 27 September 2019 says. That letter says that as at 26 September 2019, probate had been applied for.

[13] Having received a copy of the decision, Ms QK wrote to the Complaints Service on 19 December 2019. She demanded the names of the Committee members, along with a “written transcript of the findings and decision of the investigation from the Law Society”. Ms QK raised objection to her complaint being determined through the Early Resolution Process, and complaining that she had “not had the opportunity to comment on the truth and accuracy of Mr RJ’s reply” to her complaint. Ms QK confirmed that Mr YG had provided her with Mr RJ’s letter of 27 September 2019 (she does not say when), and says the decision contains a “serious discrepancy” at paragraph 8.

[14] A reply to Ms QK from Ms Rice, a NZLS Legal Standards Officer, on 9 January 2020 explains:

What the Standards Committee is trying to explain is that Mr RJ provided a copy of the letter sent to Mr YG and (separately) advised that probate had since been granted – rather than Mr RJ’s letter to Mr YG contained this information.

[15] Ms Rice explained that the separate advice from Mr RJ to which she referred was provided in the course of his telephone conversation with the Complaints Service in early December. Ms Rice also referred to Ms QK’s right to apply to this Office for a review. However, by that time Ms QK had already applied for a review. That was received by this Office on 19 December 2019.

Application for review

[16] The outcome Ms QK specifies in her application for review is:

Mr RJ breaching his duties as a lawyer and the executors breaching their duties as well.

[17] Ms QK starts:

My first matter of concern that following my initial complaint to the Law Society, I did not receive a copy of the response from Mr RJ. Thus I was unable to determine if Mr RJ had provided correct information.

[18] Ms QK confirmed she was aware, from having contacted the firm on 12 December 2019, that probate had been granted on 16 October 2019. Ms QK suggests Mr RJ should provide an “adequate explanation”, without which the discrepancy between his letter of 27 September 2019 and the decision is “not acceptable” to her.

[19] Ms QK adds that Mr RJ did not answer several of her questions about the will and the estate, added more questions and was critical of the executors’ administration of the estate. Ms QK said she did not believe Mr RJ was acting in a responsible and proper way in the estate administration. She says the Committee was incorrect in saying Mr RJ did not owe her a duty of care, and goes on to conflate his obligations as an executor/trustee with his obligations as a lawyer. Ms QK attached some paperwork about jewellery.

[20] A detailed response was provided by Mr RJ which is essentially an interim report on the administration of the estate. Mr RJ repeats what Ms QK says she was told in December, namely that the order granting probate was made in mid-October. He adds that the firm received the order in late November 2019 and says there is nothing unusual about that timing. Mr RJ added some further comments in response to Ms QK’s questions about the will, the estate administration and the relationship between the three executors.

[21] Further correspondence from Ms QK followed on 4 February 2020 in which she expanded yet further on her criticisms of the will and the executors’ decisions over the administration of the estate, describing the latter as “woefully inadequate”. Ms QK refers to financial discrepancies in the estate administration, a police investigation, and says “the accountability of the Solicitor is well below par”. Ms QK dangled the threat of another complaint about Mr RJ on an unrelated matter.

[22] Mr RJ’s response dated 7 February 2020 was brief. He had nothing to add regarding his professional conduct in acting for the estate, but attached an interim report to the beneficiaries following an executors’ meeting in January that is unremarkable in every respect.

Strike out – s 205(1)

[23] This application for review has been determined pursuant to s 205(1) of the Act which says:

- (1) The Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that it—
 - (a) discloses no reasonable cause of action; or
 - ...
 - (d) is otherwise an abuse of process.

Discussion

[24] Mr RJ's client (and the firm's) is the estate of Ms QK's deceased mother. He takes instructions from her executors/trustees. As a lawyer, Mr RJ owes wide ranging obligations to the executors as the personal representatives of Ms QK's mother.

[25] Ms QK was not a client of Mr RJ or the firm in the matter of the administration of Ms QK's mother's estate. He and it therefore owe her very limited professional duties, all of which are subject to the duties Mr RJ and the firm owe as officers of the court and to their clients.

[26] As the Committee noted, there is nothing in the complaint capable of sustaining the allegation that Mr RJ breached any of his duties as a lawyer.

[27] Like the complaint, the review application lacks a proper basis. Mr RJ's response to Mr YG dated 27 September 2019 is evidence that Mr RJ replied to Mr YG's letters of 6 and 10 September 2019. Ms QK has had a copy of that for some time. It is a complete answer to the complaint Ms QK made under the Act. Everything else is based on Mr RJ's personal appointment as a co-executor of the estate.

[28] The content of Mr RJ's reply on instructions from the executors is not only unremarkable but largely irrelevant in the context of Ms QK's complaint. It must be assumed that his response aligned with his instructions. Sending the response was more than enough for Mr RJ to meet his very limited professional obligations to Ms QK.

[29] Under the rules, Mr RJ was obliged to conduct his professional dealings with Ms QK with integrity, respect and courtesy. Ms QK says she contacted the firm/Mr RJ seeking a copy of the will. Mr RJ was under no professional obligation to provide Ms QK with a copy of the will.

[30] Other than that early foray, Ms QK offers no evidence that Mr RJ or the firm had any direct contact with her. She instructed Mr YG. To the limited extent disclosed in the materials, the lawyers exchanged correspondence. It is not clear whether Mr YG's involvement has continued. However, there is no evidence anywhere in the materials of Mr RJ being disrespectful or discourteous towards anyone. There is no evidence in the

materials that even remotely suggests a lack of integrity on the part of Mr RJ in any of his professional dealings.

[31] It is abundantly clear that Ms QK disagrees with, or does not like, what Mr RJ says in his letter of 27 September 2019. That pattern continues in the review application and her continuing correspondence. Beyond the usual standards of professionalism generally expected of any lawyer, Mr RJ is not obliged to respond, or conduct himself, in a manner that is satisfactory to Ms QK. It must be assumed that Mr RJ's conduct of the estate matter is in general accordance with his instructions from the executors.

[32] If Ms QK wanted to hold the executors to account, or further the claim she foreshadowed on 6 September 2017 her recourse would not lay with this Office. On that note, Ms QK's complaint to NZLS contains a fairly strong and explicit indication that it was spurious. It concludes with the words:

I would appreciate your intervention so my position may be protected.

[33] As Mr YG would no doubt have explained to Ms QK when she first instructed him, if Ms QK feels her position needs protection from claims on the estate by other beneficiaries, or from executor abuse, she should probably look to court process. Seeking the intervention of NZLS on the facts disclosed by Ms QK is both misconceived and an abuse of the complaint process. Ms QK's inflamed suspicions are the only cause on which it might possibly be said that Mr RJ may be guilty of theft or any other improper conduct such that intervention by NZLS might be warranted. That is not a reasonable cause.

[34] The complaint process is generally reactive. It addresses professional conduct that has occurred, professional standards that have been breached, and professional fees that have been charged. While the Act does provide for Standards Committees to intervene in lawyers' practices,¹ there must be reasonable cause to believe a practitioner is guilty of theft or other improper conduct in relation to the money or other property of another person. The ability of Committees to address conduct that may, perhaps, possibly happen at some indeterminate time in the future is decidedly limited. Furthermore, complaints must have reasonable grounds. Ms QK provided none.

[35] The only basis for criticism Ms QK could find in the Committee's decision was that it contained a so-called "serious discrepancy" at paragraph 8. The so-called serious discrepancy was contrived. Applications for probate are dealt with by the High Court. When an application for probate is filed, the High Court also receives a copy of the will. All Ms QK needed to do was contact the High Court or instruct her lawyer to do so. If

¹ Sections 162 and 163.

probate had been granted, she (or he) would have been told. It makes no sense to ask NZLS if an application has been made to the High Court for probate when the High Court is there to be asked and far better placed to answer. That was not a proper basis on which to try and protract the complaint process.

[36] While the complaint process is a free service for members of the public, it is not a free service. Lawyers fund it and the process of review by this Office.

[37] Ms QK's application for a review of the Committee's decision extends the abuse of process. A complaint that is spurious at the start cannot be cured by applying for a review of the decision that determines it. Adding to her complaints in an ambulatory fashion, as Ms QK has done as the estate administration has proceeded alongside the processes of complaint and review, does not end the charade.

[38] Careful consideration of the materials that are available on review demonstrates that, from start to finish, Ms QK's complaint and application for review have been a collateral attack on Mr RJ, available only because he is an executor/trustee who happens also to be a lawyer. Like her complaint, Ms QK's application for review is an abuse of process.

[39] The review application and associated correspondence are a transparent attempt to obtain information and to draw Mr RJ into adopting or disclosing a position, be that his/the firm's and/or the executors'. It is transparently part of a strategy to assist Ms QK to gain some leverage against the estate. Ms QK's application for review has only the most tenuous of links to Mr RJ's professional conduct as a lawyer. It is mischievous.

[40] Ms QK says in her application for review that as a beneficiary of the estate she is at Mr RJ's mercy. That is an exaggeration. Applications for review are to be determined in a manner that is consistent with the purposes of the Act. One of those is to recognise the status of the legal profession. Like the suggestion that the decision contains a serious discrepancy, the idea that Ms QK is at Mr RJ's mercy also a contrivance. Ms QK cannot apply to this Office for a review with the stated objective of having Mr RJ and the other executors removed on the basis that Mr RJ breached his duties as a lawyer and the executors breached their duties as well without evidence.

[41] This Office has no jurisdiction over Mr RJ's co-executors. Mr RJ is not a disposable ensign. Mr RJ is an officer of the High Court and, along with his co-trustees, has been appointed by the High Court as one of the trustees of Ms QK's mother's estate. As such he is accountable to the High Court. Ms QK can initiate a process in the proper jurisdiction to challenge that situation if she so chooses.

[42] Having reread Ms QK's correspondence in the review process I note that it has little or nothing to do with her original complaint. That was just the start. It is not a function of this Office to become involved in exchanges of correspondence over disputed estate matters.

[43] There is nothing about Ms QK's complaint or her application for review that satisfies me there is a valid complaint to be made regarding Mr RJ's conduct as a lawyer. Ms QK's correspondence in the course of the review process reinforces that view. Meritless complaints and spurious applications for review should not be encouraged.

[44] Ms QK's application for review is an abuse of process and discloses no reasonable cause of action. The logical conclusion is to strike the whole of it out. There is no reason not to do so. The decision of the Standards Committee is unaffected.

Anonymised publication

[45] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

Decision

[46] Ms QK's application for review discloses no reasonable cause of action, is an abuse of process and is struck out in whole pursuant to s 205(1)(a) and (d) of the Lawyers and Conveyancers Act 2006.

DATED this 13TH day of MAY 2020

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:

Ms QK as the Applicant
Mr RJ as the Respondent
Mr TM as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society