

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

[2020] NZLCRO 75

Ref: LCRO 192/2019

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

NA

Applicant

AND

LC

Respondent

The names and identifying details of all but the applicant in this decision have been changed.

Introduction

[1] Ms NA has applied for a review of a decision by the [Area] Standards Committee [X] to take no further action in respect of her complaint concerning the conduct of the respondent, Ms LC.

Background

[2] Ms NA filed a complaint against Ms LC with the New Zealand Law Society's Lawyers Complaints Service on 17 October 2019.

[3] Her complaint begins with indication that she wished to make "another" formal complaint against Ms LC.

[4] Ms LC had been appointed lawyer for Ms NA's daughter in proceedings that were before the Family Court.

[5] Ms NA had lodged her first complaint against Ms LC in June 2018.

[6] Ms NA advises that the Complaints Service directed that her first complaint be considered by the District Court.¹

[7] Ms NA explains that Ms LC was replaced as lawyer for the child on her case, but some time later, reappointed.

The complaint and the Standards Committee decision

[8] Ms NA objects to Ms LC being reappointed as lawyer for her daughter.

[9] She considers that Ms LC's sympathies in the dispute being litigated before the Family Court lie with the father of her child.

[10] The Standards Committee delivered its decision on 11 November 2019.

[11] The Committee determined, pursuant to s 138(1)(f) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate.

[12] In reaching that decision the Committee concluded that:

- (a) Ms LC's appointment as lawyer for the child was made by the Family Court.
- (b) The appointment was only able to be reviewed by the Family Court.
- (c) The appropriate course of action was to refer the complaint to the Administrative Family Court judge for [City A].

[13] The Committee noted that in the event that the Family Court was to conclude that Ms LC had failed to provide a proper service, it would be open to the Administrative Judge to bring the matter to the attention of the Complaints Service.

Application for review

[14] Ms NA filed an application for review on 19 December 2019.

[15] Ms NA submits that:

- (a) She is angry that Ms LC has been further appointed as her daughter's lawyer.

¹ I assume that Ms NA is confirming that her first complaint was considered by an administrative Judge of the Family Court.

- (b) Her complaints had not been properly addressed.
- (c) She considered her complaints to be “very horrific regarding LC’s attitude and management of my Family Court case”.

[16] The outcome Ms NA seeks is that a new lawyer for child be appointed.

Nature and scope of review

[17] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:²

... 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.

[18] More recently, the High Court has described a review by this Office in the following way:³

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.

[19] 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.

² *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

³ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

Discussion

[20] It is clear that Ms NA has experienced a very difficult time over a period of many years. Her complaint presented as a harrowing account of the turmoil she has endured in working to ensure that her daughter was raised in a safe and secure environment.

[21] But it is not the role of a Review officer to form a view on the merits of a difficult case that has been wending its way through the Family Court for a number of years.

[22] Her initial complaint filed with the Complaints Service dealt but briefly, and in general terms, with specific criticisms of Ms LC.

[23] The Committee was correct to conclude that concerns over the appointment of lawyer for a child are matters that are to be determined by the Family Court, not through the vehicle of a conduct complaint being pursued against the lawyer appointed.

[24] Similarly, concerns over the performance of a lawyer for child, are matters that fall to be managed by the Family Court.

[25] It has been reinforced in a decisions that have issued by Legal Complaints Review Officers, that complaints about the performance of lawyers appointed by the Court to represent children, must be directed towards the Family Court.

[26] In *LCRO 59/2018* (14 December 2018) at [49] it was noted that:

Judges in the Family Court, applying legislation which demands observance of the paramountcy principle, would be acutely aware of the critical importance of the role of lawyer for child and the standards of competence and integrity demanded of those lawyers. It presents as unlikely that a judge would approach a complaint about a lawyer for child casually...

[27] The Family Court *Practice Note: Lawyer for the Child: Selection, Appointment and Other Matters* issued by the then chief Family Court judge on 3 April 2015, outlines the procedure to be followed by parties who wish to register a complaint concerning a lawyer appointed for children.

[28] That practice note sets out in comprehensive terms, the process to be followed when a complaint concerning a lawyer for the child is received.

[29] I do not need to provide a full account of that practice note, but would note that if a Judge investigating a complaint concludes that there is substance to the complaint, the Judge may take a number of steps, including referring the complaint to a panel who

may make a direction that the lawyer be removed from the list of lawyers eligible to represent children in proceedings before the Court.

[30] Ms NA is not without remedy. She may, as she has done in the past, raise her concerns about the appointment of Ms LC with the Family Court.

[31] I agree with the Committee, that if following investigation of her complaint, the investigating judge was to conclude that Ms LC had failed to fulfil her role adequately, the basis for a conduct complaint may be laid. An adverse disciplinary response would be likely inevitable if Ms LC's performance was determined to have, as Ms LC describes it in her review application, approached the "horrific".

[32] I make no comment on the criticism that Ms NA makes of Ms LC as I have concluded that Ms NA has advanced her complaint in the wrong jurisdiction. I would however note that her complaint is demonstrably lacking in evidence as to precisely how Ms LC is said to have failed in her obligation to represent her client appropriately.

[33] Section 205 of the Lawyers and Conveyancers Act 2006 provides that a Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that the application:

- (a) discloses no reasonable cause of action; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of process.

[34] This is an appropriate case to exercise the discretion available to strike out Ms NA's application for review.

[35] Her application discloses no reasonable cause of action. Her complaint is not properly a matter for determination through the vehicle of a conduct complaint.

[36] The Committee's decision to take no further action on the complaint is confirmed.

[37] 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

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

DATED this 27TH day of May 2020

R Maidment
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 NA as the Applicant
Ms LC as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society