

CONCERNING

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the Canterbury Standards Committee 1 of the New Zealand Law Society

BETWEEN

MR WARMINISTER

of Christchurch

Applicant

AND

MR FLINT AND MR

RADNORSHIRE

of Christchurch

Respondent

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

DECISION

[1] Mr Warminster complained about the conduct of Mr Flint and Mr Radnorshire when they acted for him while practicing (as partner and employed lawyer) with the firm of XX. The work was undertaken in respect of an objection that Mr Warminster had to the development of land adjacent to his property. Mr Flint was the lawyer primarily responsible for assisting him. Mr Radnorshire appears to have been the partner supervising Mr Flint. The dispute was ultimately resolved by the SDC purchasing Mr Warminster's land. Mr Flint assisted in the negotiation of this.

[2] On 3 September 2009 Mr Warminster complained to the New Zealand Law Society. The main thrust of that complaint was that the respondents acted in the face of a conflict of interest. This was alleged to be due to the involvement of a Mr YY. Mr YY was a councillor of the SDC and also a client of XX. Mr Warminster further complained that the respondents did not advise him of legal avenues available (particularly referring to ex parte enforcement orders) and that the settlement finally reached on their advice was inadequate.

[3] In his complaint Mr Warminister acknowledges that an earlier complaint made against Mr Flint was dismissed but states his intention to expand on that complaint and also to initiate a complaint against Mr Radnorshire as “partner in charge”. He states that the complaint deserves reconsideration due to new evidence.

[4] Mr Warminister also alleged that an email of his of 24 March 2004 had been forged by inserting the words “even though you made full disclosure to us” in it. Mr Warminister states that the forgery can be established by virtue of the fact that the word “disclosure” was not a part of his vocabulary at the time the alleged email was written.

[5] A further aspect of the complaint was that the respondents had “perverted the course of justice” by failing to produce to the Complaints Committee in respect of the earlier complaints documents relating to advice on suggested strategy (presumably in the substantive SDC matter).

[6] The Standards Committee considered this complaint on 21 October 2009 and determined that no further action was necessary or appropriate. The reason given for its decision was that the complaint was the same as an earlier complaint considered by the (now defunct) Canterbury District Law Society Complaints Committee which was made in July 2007 and that it did not raise any new issues.

[7] Mr Warminister seeks a review of that decision.

[8] The review was conducted on 15 February 2010. Mr Radnorshire and Mr Flint were not required to attend and did not attend. Mr Warminister attended in person and made submissions.

[9] Section 351(2) of the Lawyers and Conveyancers Act 2006 (the Act) provides that no person is entitled to make a complaint that has been disposed of under the Law Practitioners Act 1982. Accordingly in so far as the complaint of Mr Warminister relates to the same subject matter as the complaint of July 2007 it cannot be considered. This complaint disposed of complaints against Mr Flint in respect of allegations of conflict of interest, informed consent, termination of the retainer, and the standard of the work. In so far as if the new complaint seeks to reopen any of those issues, the Standards Committee was correct in declining to take any further action.

[10] There are, however, a number of matters which, at least on a strict interpretation fall outside of that section. In particular the first complaint did not name Mr Radnorshire, did not allege the forging of an email, and did not allege perversion of the course of justice. Accordingly the Committee may not have expressed itself well when it said that the new complaint did not “raise any new issues”.

[11] I observe, however, that the Standards Committee did not rely on s 351(2) of the Act, but rather on the more general ground found in s 138(2) of the Act which provides:

A Standards Committee may, in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Standards Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

[12] I consider it appropriate to consider whether the Standards Committee ought not to have exercised that discretion in respect of the new matters raised in the latest complaint.

Mr Radnorshire

[13] The new complaint names Mr Radnorshire in his role as supervising partner of Mr Flint. Mr Warminister does not particularise any specific allegation against Mr Radnorshire other than his general involvement in the matter. It appears therefore that the complaint against Mr Radnorshire is a duplication of the earlier complaint against Mr Flint and effectively an attempt to re-litigate the issues which were disposed of by the Complaints Committee in that matter.

[14] In light of this it was appropriate for the Standards Committee to decline to take further action in respect of the complaint against Mr Radnorshire.

Forgery/alteration

[15] Mr Warminister has alleged forgery/alteration of an email from March 2004. There is no independent evidence of that forgery. It is not entirely clear if Mr Warminister is alleging that the email was altered or that the whole email is a forgery. From the hearing I understood it to be the former. If so Mr Warminister did not produce what he claims is the original unaltered email. He asserts that the phrase "even though you made full disclosure to us" was inserted into an email. In support of his allegation he says that the word "disclosure" was not one he was familiar with in 2004 and refers to other documents of his in which he does not use the term around that time. In his complaint, Mr Warminister submits that in light of this "it is fair to assume past certainty that I did not write this email".

[16] This is a very serious allegation and would require clear evidence before a finding of that nature was made. There is simply no independent evidence to substantiate it.

[17] Also relevant is the fact that the alleged forgery / alteration related to documents created in 2004 and presented by Mr Flint the Complaints Committee in 2007/2008. Mr

Warminister did not take issue with the alleged forgery at that time and only now raises it. This weighs in favour of the Committee's decision to take no further action.

Perverting the course of justice

[18] Mr Warminister also alleges that Mr Flint perverted the course of justice by not being frank with the Complaints Committee in the earlier complaint. In particular he complained that

As part of the defence to my complaint of conflict of interest Mr Flint produced a time line of documents (appendix 3) listing the documents (events) involved in those negotiations. It is significant none of the letters of advice pertaining to suggested strategy are listed or mentioned.

[19] He claims that these letters would have been prejudicial to Mr Flint. He also stated he has no intention of producing the omitted documents to anybody until it is established that the absence of the documents is fraudulent. At the hearing it appeared that Mr Warminister was alleging Mr Flint had removed documents from his file, however, on reading the complaint it is clear that the allegation is that Mr Flint did not give certain documents to the Complaints Committee when answering the first complaint.

[20] There is no professional breach in this. While the Complaints Committee could have required Mr Flint to produce identified documents or indeed the entire file (s 101(3)(d) Law Practitioners Act 1982) it did not do so. Mr Flint was entitled to present to the Committee those documents he considered supported his stance. If Mr Warminister considered that other documents (which he states he is in possession of) were relevant it was open to him to put them to the Committee.

[21] In so far as Mr Flint presented a time line and list of documents to the Committee that Mr Warminister says was misleading and had gaps I do not consider that there is anything sinister in this. It would be unusual for such a time line and list of documents presented to a Complaints Committee to include every event and document. Rather it highlighted those matters and documents Mr Flint considered relevant in supporting his stance.

Conclusion

[22] The decision of the Committee might perhaps be criticised for being somewhat brief and lacking in reasons. However, the decision itself is an appropriate one in the circumstances.

Decision

The application for review is declined pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006 and the decision of the Canterbury Standards Committee 1 is confirmed.

DATED this 18th day of February 2010

Duncan Webb
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 Warminister as Applicant
Mr Flint and Mr Radnorshire as Respondents
The Canterbury Standards Committee 1
The New Zealand Law Society