

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

LCRO 206/2018

CONCERNING

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

AND

CONCERNING

a determination of [Area] Standards Committee [X]

BETWEEN

JA

Applicant

AND

CL

Respondent

DECISION

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

Introduction

[1] Mr JA has applied for a review of the determination by [Area] Standards Committee [X] to take no further action with regard to his complaints about Ms CL.

[2] The essence of the determination, and the issue to be addressed, is set out in [6] of the Committee's determination:

The Standards Committee considered what, if any, professional obligations Ms CL owed to Mr JA while she acted for Ms BS.

Background

[3] Ms CL acted for Mr JA's wife (Ms BS) in relation to matters arising out of their separation, in particular, negotiating and completing an agreement pursuant to s 21 of the Property (Relationships) Act 1976, and implementation of its terms.

[4] Various assets¹ were held in a trust (the [Name] Trust) of which Mr JA and Ms BS were trustees. The trust was the registered proprietor of three properties – the family home in [Name] Road, a property at [Place 1], and a property at [Place 2].

[5] Mr JA's complaints about Ms CL relate to her conduct when acting for Ms BS in relation to these matters.

Mr JA's complaints²

[6] Mr JA identified seven specific aspects of Ms CL's conduct about which he complained, and provided comprehensive material to support each of his complaints. The issues identified were:

1. Harassment, unprofessional and unethical behaviour.
2. Refusal to comply with signed agreement.
3. Verbal and written slander – unwarranted attacks on fellow professionals.
4. Claiming to represent Mr JA when dealing with the trust accountant.
5. Defamation – encouraging unethical behaviour – ignoring correspondence – not seeking advice or opinion from the trust accountant or lawyer, failing to give a true picture to her client as per the code of ethics.
- 5A. No replies to errors made at mediation.
6. Verbal abuse – general unprofessional behaviour.

[7] In its determination, the Standards Committee recorded Mr JA's complaints as being:³

- That Ms CL made unsubstantiated allegations against him and failed to respond to communications from his lawyer in a timely manner;

¹ Mr JA says all assets were held in the Trust.

² As set out by Mr JA.

³ Standards Committee determination at [5].

- That Ms CL refused to comply with, or caused undue delay in complying with, an agreement to transfer a property in [Place 1] set out in the agreement;
- That Ms CL made unwarranted verbal attacks on other lawyers (including his lawyer Mr KW);
- That Ms CL wrote to the trust accountant claiming to represent Mr JA, without his knowledge or consent;
- That Ms CL made unfounded accusations about Mr JA, including that he took money from the trust (while failing to ensure her client Ms BS returned \$120,000 to the trust) and that this was unethical;
- That Ms CL failed to correct a calculation made by Mr RY;
- That Ms CL in general acted in an aggressive and unprofessional manner.

The Standards Committee determination

[8] The Committee commenced its consideration of the complaints by noting that “each lawyer is primarily responsible to advise and protect the interests of her own client...”.⁴ It noted that Ms BS herself had not made any complaints about Ms CL’s conduct.

[9] It said: “...the existence of a duty to a non-client is very much an exception” and that, “these principles are recognised in the client care rules”.⁵

[10] The Committee continued:⁵

For that reason, under most circumstances it is not conceivable that a lawyer could owe a duty of care to a third party on the opposing side of a dispute, as this would have clear potential to derogate from that client’s own interests and right to independent counsel.

[11] The Committee:⁶

.....was satisfied that the allegation that Ms CL had been unprofessional to Mr JA did not reach the evidentiary threshold to make a finding. The evidence does not support a finding that any conduct on the part of Ms CL was lacking in integrity, respect or courtesy. It followed that, in respect of the allegations set out above, that Ms CL had not breached her professional obligations under Rule 12 of the RCCC and/or any other rule or enactment.

⁴ At [11].

⁵ At [13].

⁶ At [21].

Mr JA's application for review

[12] In his application for review, Mr JA did not indicate what outcome he sought. However, the outcome he sought from his complaint was:⁷

My complaints are about trying to ensure inappropriate behaviour like this is reduced and the law society is aware of what is going on by this lawyer, and to hopefully reduce the likely hood [sic] of other victims being mistreated in this way.

Although my personal opinion is this Lawyer is not fit to practice, I understand the Law society has mechanisms in place to review behaviour and would hope the full extent of those mechanisms are used to get to the bottom of this behaviour.

Review

[13] It must be said at the outset of this decision that the only option available to remove a lawyer from interaction with clients and/or the public (which is what Mr JA seeks) is to strike the lawyer from the roll of barristers and solicitors. That penalty can only be imposed following a finding of misconduct by the Lawyers and Conveyancers Disciplinary Tribunal. The matters raised by Mr JA do not in any way constitute matters that warrant referral to the Tribunal.

[14] Standards Committees, and this Office, may make findings of unsatisfactory conduct against a lawyer, and, in the circumstances as presented, that would require a breach of any of the Conduct and Client Care Rules,⁸ or a breach of s 12(b) of the Lawyers and Conveyancers Act 2006, being conduct unbecoming, unprofessional or otherwise being "conduct that would be regarded by lawyers of good standing as being unacceptable".

[15] This review proceeds on that basis.

[16] Mr JA provided comprehensive reasons in support of his application for review of the Standards Committee determination. His reasons are predominantly based on the premise that Ms CL was a party to the agreement,⁹ but was endeavouring to amend the terms of the agreement.

[17] The following points are relevant to this decision and constitute responses to a number of Mr JA's complaints:

- Mr JA was not Ms CL's client.

⁷ Application for review, supporting documents, at 6.

⁸ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

⁹ In his supporting reasons for the application he states that the s 21 agreement was fully signed, including by Ms CL.

- Mr JA's remedy for non-compliance with the terms of the property agreement was to apply to the court to enforce the agreement against Ms BS.
- Ms CL was not a party to the property agreement.
- Ms CL did not act for the Trust.
- Ms CL was not a trustee of the Trust.
- Ms CL did not/could not, act "in the capacity" of a trustee.
- Ms CL did not "owe" the Trust or Mr JA (as trustee and beneficiary) any duty which Mr JA refers to as Ms CL's 'professional obligations'.
- Ms CL was not obliged to follow advice/reported comments from other lawyers or persons.
- Ms CL's correspondence must be read as communicating decisions taken by Ms BS.
- Whether Ms CL was conversant with trust law was a matter for Ms BS to be concerned about.
- If Ms CL was not acting in the interests of her client then that was an issue for Ms BS.
- Any lost opportunity caused by Ms BS's failure to comply with the terms of the agreement would need to be addressed in Court.
- Ms BS was a trustee of the Trust. Trustees must act in the interests of the beneficiaries. If a beneficiary or another trustee thinks that a trustee has not acted in accordance with his or her obligations, then that must be pursued in Court.

Ms CL's conduct

[18] Mr JA complains generally about Ms CL's conduct, which he describes as "bullying, harassing, unprofessional, unethical". However, he says that "the catalyst for [his] complaint was that Ms CL refused to comply with, or caused undue delay in complying with, an agreement to transfer a property in [Place 1] set out in an

agreement.”¹⁰ He says that he does not believe the Committee has “handled or answered this at all”.¹¹

[19] The response to that complaint is that it was Ms BS’s responsibility to comply with the agreement, and if Ms CL was responsible for Ms BS’s default, then it would be Ms BS who has grounds for complaint. In this regard, the Committee’s observation that Ms BS has not complained about Ms CL’s conduct is particularly pertinent.

[20] The Committee determined the complaint about Ms CL’s personal conduct, on the basis that the evidence did not support the complaints.¹² In Mr JA’s complaint, he refers to a letter from Ms CL of 6 July 2016. He describes this letter as “making unsubstantiated, defamatory and inflaming accusation” about him. The letter in fact, says that Ms CL’s client “has raised two separate concerns” with her, and it is the detail of those concerns with which Mr JA takes issue. A lawyer does not assume responsibility for the correctness or otherwise of what he or she is told by his or her client.

[21] Mr JA’s complaints are not substantiated.

[22] With regard to Mr JA’s complaints about Ms CL’s dealings with other professionals, the fact that there has been no direct complaints from these persons, or that Mr JA has not provided supporting complaints from them, is particularly relevant.

[23] The Committee determined that Mr JA’s complaints of this nature did not reach the evidentiary standard required.¹³ That is an appropriate determination to be made in this regard.

The person bound to comply with the relationship property agreement was Ms BS

[24] Mr JA said that Ms CL ‘intentionally ignore[d] a fully signed and ratified agreement’. Any failure to comply with the terms of the agreement was a failure by Ms BS. Mr JA’s remedy was to enforce the terms of the agreement against her.

Ms CL’s correspondence communicated decisions taken by Ms BS

[25] Mr JA presents correspondence from Ms CL as being made in a personal capacity. Ms CL communicated decisions taken by Ms BS. If they were not, that was an issue for Ms BS.

¹⁰ Application for review, supporting reasons.

¹¹ Ibid.

¹² At [21].

¹³ Ibid.

The [Place 1] property

[26] At [16] of its determination, the Standards Committee says that “Mr JA was not self-represented and had his own lawyer to advise him”. Mr JA says that was not correct as at that time he was representing himself.

[27] Mr JA does refer to a number of occasions where he says he has referred matters to lawyers for comment. Nevertheless, whether self-represented or not, Ms CL owed no duty to Mr JA. The Committee’s misstatement in [16] is immaterial.

Summary / decision

[28] The preceding paragraphs address Mr JA’s complaints that Ms CL had a legal duty to take all necessary steps to ensure the provisions of the property agreement were complied with. That was not the case. The duty to comply with the terms of the agreement lay with Ms BS. Mr JA’s other complaints are addressed by the bullet points at [17] of this decision.

[29] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee to take no further action with regard to Mr JA’s complaints is confirmed.

DATED this 22nd day of JULY 2020

O 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 JA as the Applicant
Ms CL as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society