

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of [X] Standards Committee

**BETWEEN**

**LMN Law**

Applicant

**AND**

**HR**

Respondent

**DECISION**

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

**Introduction**

[1] LMN Law (LMN)<sup>1</sup> has applied for a review of a determination by the [X] Standards Committee of the New Zealand Society of Conveyancers (NZSoC) to take no further action in respect of complaints by Mr LM about Ms HR.

[2] This review arises out of the ongoing (and unresolved) issue of the manner in which lawyers and conveyancers are to deal with each other following the recognition of conveyancing practitioners as a profession in the Lawyers and Conveyancers Act 2006.<sup>2</sup>

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<sup>1</sup> The application form provides for the name of a company to be inserted as the applicant with provision for communications to be marked for the attention of an individual. In the form the applicant was recorded as being LMN Law with Mr LM being the person to communicate on behalf of the company. Throughout this decision, the applicant is referred to as Mr LM, but where reference is to the applicant, then this is to be interpreted as being LMN Law.

<sup>2</sup> One of the expressed purposes of the Act is "... to establish the new profession of conveyancing practitioner" (Section 3(1)(c)).

## Background

[3] Mr LM (a lawyer) acted for the purchaser of a residential property.

[4] Ms HR (a conveyancing practitioner with the firm OPQ Limited) acted for the vendor.

[5] The vendor and the purchaser of the relevant residential property had entered into an Agreement for Sale and Purchase on the standard Auckland District Law Society Inc. (ADLSI)/Real Estate Institute of New Zealand (REINZ) form.

[6] Clause 3.10 of the Agreement provides:<sup>3</sup>

The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

[7] "Remote settlement" is defined in cl 1.1 of the Agreement:

"Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.

[8] Paragraph 2.56 of the NZLS Property Law Section Guidelines provides:

Where the conveyancing practitioner acts for the vendor and the lawyer acts for purchaser, the instruments should be released into the control of the purchaser before the funds are paid. The conveyancing practitioner is protected by the lawyer's undertaking, which he or she could enforce.

Where a conveyancing practitioner acts for the purchaser, the vendor's lawyer should not release the instruments until settlement moneys are received in cleared funds.

[9] A mortgage by Ms HR's client to her clients' bank was registered against the title to the property that was to be discharged on settlement.

[10] Ms HR followed the opinion of the NZSoC that "Guideline 2.56 is unlawful"<sup>4</sup> and declined to settle on the basis contemplated by the Guideline. Instead, she requested that Mr LM remit the settlement monies to her against her undertaking to then release the e-dealing in the same manner as the Settlement Guidelines provide for when lawyers are acting for the vendor and the purchaser.

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<sup>3</sup> The letters PLS refer to the Property Law Section of the New Zealand Law Society

<sup>4</sup> Letter of Ms HR to NZSoC Complaints Service (wrongly dated 31 March 2016).

[11] Mr LM refused to accept Ms HR's undertaking and followed the directive in Guideline 2.55, which provides:

A lawyer should not seek, accept or need to rely on an undertaking from a non-lawyer. The paramount concern for the lawyer must be the protection of the interests of the client concerned. Undertakings given by lawyers can be and are enforced by a Court under its inherent jurisdiction arising from the fact that lawyers are officers of the Court. Conveyancing practitioners are not officers of the Court and their undertakings cannot be enforced by the Court under its inherent jurisdiction. An undertaking given by a non-lawyer may not be enforceable in law.

[12] Ms HR then suggested the transaction be settled by Mr LM appointing an agent near to her offices in Tauranga to attend to a personal settlement, which is effected by the handing over of a bank cheque and contemporaneous release of the e-dealing. Mr LM considered that the costs of appointing the agent should be borne by Ms HR.

[13] Extensive communications between the parties took place, with each party referring to the advice and views of their respective professional bodies—the Property Law Section of the New Zealand Law Society and the New Zealand Society of Conveyancers. The transaction was settled on terms agreed between Mr LM and Ms HR.

[14] The issue which gave rise to Mr LM's complaint was an email, dated 18 March ("the 18 March email"), which Ms HR wrote to her client after settlement, which is set out below:

Hi Ms M

The buyers solicitor asked me to do something that I have no authority to do. It is something that they would never do themselves, however because I am a conveyancing practitioner as opposed to being a lawyer, the buyers lawyer considered it appropriate to try and get me to breach my obligations to you and your bank.

To settle by "reverse settlement/reverse undertaking" means that I have to release your discharge of mortgage and your ownership in the property to the buyers solicitor before the buyer pays the settlement funds. Per your banks discharge of mortgage instructions (below) I was unable to release the discharge of mortgage until I have the funds to repay the banks loan; ...

Also, per the settlement terms set out in the contract that both you and the buyer have signed, the release of the discharge of mortgage and title ownership must follow the payment of funds; ...

What the buyers lawyer asked me to do was unprofessional and probably unlawful given that they wanted me to breach my obligations to you and to your bank to settle in a manner that is not pursuant to the terms of the contract. It is however unfortunately a solution that the NZ Law Society is recommending (through their Guidelines document/and that web-link page that you forwarded)

to buying lawyers who do not wish to deal with selling conveyancers. The NZ Society of Conveyancers has never accepted this “solution” as an acceptable method of settlement, because it does not protect you or your bank and it is contrary to the express terms of the contract. This is a problem that has been referred to the Ministry of Justice but at present is a matter that unfortunately remains unresolved.

Subsequently, the buyers solicitor elected to settle by the only other method available, which is for them to deliver to me a bank cheque (the funds have to be delivered to me in my office if they want to see me release the discharge of mortgage and transfer of ownership from my computer at the time that they hand over the funds). They then insisted that you should pay for half of the cost that would be charged by a local lawyer to obtain a bank cheque for the settlement of funds and deliver it to me for settlement.

I forwarded to them the below article, which was written by the chair of the Property Law Section, being a division of the Law Society and published to all lawyers. However the buyers lawyer elected to not heed this advice, and instead they tried to make you accountable for paying half of the local lawyers cost to deliver the cheque. I advised them that you are not obliged to pay any cost for them electing to settle in a manner that is contrary to normal procedure.

I trust that this clarifies the matter and regret that you and the buyer were caught up in a matter that is between the NZ Law Society and the NZ Society of Conveyancers. Very seldom do lawyers make issue with settling with us as a conveyancing firm given that 99% of our sales transactions are settled in the normal manner, electronically and remotely and without such nonsense.

I hope you have a good weekend.

Best regards

HR  
Conveyancing Practitioner  
OPQ Ltd

[15] The vendor forwarded this email to the purchaser, who in turn forwarded it to Mr LM. Mr LM objected to its content.

### **The complaints**

[16] Mr LM complained to the NZSoC. He said:<sup>5</sup>

- (a) That Ms HR had asserted that LMN had asked her to breach obligations to the Vendor and the Vendor’s bank. Mr LM said that was untrue and their correspondence made no such request. Further, the “reverse undertaking” process is included in the PLS Guidelines and is therefore imported into the standard agreement. The article sent to them by Ms HR directly contradicts the statement made by her by stating: “the reverse undertaking is now essentially a term of the Agreement”;

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<sup>5</sup> Letter LM to NZSoC Complaints Service 10 May 2016.

- (b) That LMN had asked Ms HR to do something “unprofessional and probably unlawful”. There is no basis to this allegation;
- (c) That LMN had insisted that the Vendor pay one half of the cost of the agent; and
- (d) That Ms HR said “99% of the sales are dealt with in a normal manner” without such nonsense.

Regarding the allegations by Ms HR, Mr LM said:

- (a) Ms HR has breached the requirements of Rules 6 & 29 of the Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Client Care) Rules 2008 in making an allegation against LMN.
- (b) Ms HR appears to be of the view that a reverse undertaking is probably unlawful without considering the statement made by Mr G (the [designation] of the Property Law Section of the New Zealand Law Society). LMN are concerned that Ms HR does not have a clear understanding of the legal position.
- (c) To suggest that a lawyer is acting “unprofessionally” and “probably unlawfully” is a serious allegation.
- (d) Ms HR suggested that LMN insisted on the Vendor paying one half of the agent’s fee. This does not reflect what LMN said in their letter where they asked if the Vendor would be agreeable to this solution.
- (e) Ms HR makes no reference to the article written by Mr G attached to LMN’s letter of 17 March which was the basis of the suggestion they made. By not referring to that article Ms HR implied that LMN’s request to pay 1/2 of the cost of an agent as being without foundation.

### **The Standard’s Committee determination**

[17] The Committee made some initial observations:<sup>6</sup>

The 18 March 2016 Email was sent by the Respondent to her client [HR to Ms M of 5:06:08pm] with no ‘cc’ or ‘bcc’ recipients. As such it was intended solely as a communication between the Respondent and her client.

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<sup>6</sup> Notice of Determination by the Standards Committee (SC) of the New Zealand Society of Conveyancers (NZSoC), 26 August 2016 at [6] and [8].

The 18/3 email and the preceding correspondence between the Complainant and the Respondent highlight the difficult position that the current ADLS & REINZ Real Estate Agreement for Sale and Purchase (“ASP2012(4)”) puts conveyancers in, who represent vendor/mortgagor clients.

[18] It then referred to rules 6 and 29 of the Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Client Care) Rules 2008, which provide:

**6 Standards of professional conduct**

- (1) Every conveyancing practitioner must at all times act in good faith and must conduct himself or herself with honesty, fairness, and professionalism in all of his or her dealings, whether with clients, practitioners, or third parties.

**29 Respect and courtesy**

A conveyancing practitioner must treat any third party with whom he or she deals with respect and courtesy.

[19] The Committee considered that it:<sup>7</sup>

... firstly need[ed] to deal with the issue of whether any protection extends to communications between a conveyancing practitioner and their client in the circumstances highlighted in this complaint.

and came to the view that:<sup>8</sup>

... this was a confidential communication between conveyancer and her client containing full and frank discussion of aspects of the legal services provided.

[20] The Committee concluded that:<sup>9</sup>

As such the email communication complained of needs protection on a similar basis as the legal privilege afforded to communications between a lawyer and their client in similar circumstances.

[21] In support of this view, the Committee observed that:<sup>10</sup>

... the Respondent did not communicate directly with the Purchaser nor any other third party and the communication was intended solely for the benefit of her client.

[22] At paragraph [21] of its determination, the Committee noted that it “sought to maintain consistency in similar cases and decisions made.”<sup>11</sup> In this regard, it referred in some detail to two determinations by the Lawyers’ Complaints Service Standards Committees which had been provided to it by Ms HR<sup>12</sup> in

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<sup>7</sup> Notice of Determination by the Standards Committee (SC) of the New Zealand Society of Conveyancers (NZSoC), 26 August 2016.

<sup>8</sup> At [17].

<sup>9</sup> At [18].

<sup>10</sup> At [20].

which the Lawyers' Standards Committee considered the privileged status of communications between a lawyer and his/her clients.

[23] Having considered these determinations, the Committee then reached the view that:<sup>13</sup>

... the Respondent may rely on the practitioner/client relationship and protection given to confidential communications analogous to that given in the above decisions.

[24] The Committee then addressed the second issue raised by Mr LM:<sup>14</sup>

... whether any of the statements made in that confidential communication are such that they "cross the line of impropriety" to such an extent that a disciplinary response is warranted.

[25] After considering the first statement complained about by Mr LM, the Committee said:<sup>15</sup>

In the circumstances of the exchange the SC does not believe that the Respondent "crossed the line of impropriety" in her 18/3 Email when stating to her client that the Complainant requested, albeit indirectly that she release the instrument "into the control of purchaser prior to payment of any settlement funds".

[26] The second complaint addressed by the Committee was Mr LM's assertion that Ms HR:<sup>16</sup>

... alleged in her 18/3 Email that he had asked her to do something that was "unprofessional and probably unlawful". ...

[27] The Standards Committee did not accept that was the case. It went on to say:<sup>17</sup>

Once again, in the circumstances of the exchange and the ongoing disagreement between the Property Law Section and the New Zealand Society of Conveyancers respective views as to the legal effect of a contractual term that requires a conveyancer to breach professional undertakings, the SC does not believe that the Respondent "crossed the line of impropriety" in her 18 March 2016 email when stating to her client that she apprehended that what the Complainant was asking her to do was "unprofessional and probably unlawful".

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<sup>11</sup> At [21].

<sup>12</sup> Refer to paragraphs [39]-[49] subsequently for comments about the provision of these determinations to the committee and the detailed references to them by the committee.

<sup>13</sup> Above n 12, at [23].

<sup>14</sup> At [24].

<sup>15</sup> At [28].

<sup>16</sup> At [29].

<sup>17</sup> At [30]-[31].

The SC accepts that a conveyancing practitioner who breached any undertakings to a vendor's mortgagee by adhering to ASP 2012(4) and releasing a dealing before receiving funds would in fact be doing something "unprofessional and unlawful". In stating that to her client the SC finds that the Respondent was providing an accurate assessment of the position she was in and the statement did not "cross the line of impropriety".

[28] The Committee then considered:<sup>18</sup>

The third objection to the 18 March 2016 email complained of by the Complainant relates to the statement that the Complainant "insisted" that her client pay half the costs of the proposed agent.

[29] It reached the view that:<sup>19</sup>

Once again the NSC does not feel that this statement "crossed the line of impropriety" in terms of confidential communications as between a conveyance and their client.

[30] The final issue addressed by the Committee is the statement by Ms HR that:<sup>20</sup>

If as asserted by the Respondent, "99%" of the Respondent's conveyancing transactions do proceed "in the normal manner" then the SC accepts the remaining 1% who insist on adherence to the strict terms of ASP 2012(4) which place conveyancers in potential breach of their professional undertakings, might validly be apprehended by conveyancers as being deliberately obstructive.

The Committee did not consider this statement:<sup>21</sup>

... "crossed the line of impropriety" in terms of confidential communications as between a conveyance and their client.

[31] Having considered the complaints and:<sup>22</sup>

... all relevant matters the committee [did] not find the Respondent guilty of misconduct or unsatisfactory conduct under Rules 6 or 29 of the Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Care Rules) 2008. Consequently, the SC intends to take no further action under s.152(2)(c) of the Lawyers and Conveyancers Act 2006.

[32] It continued:<sup>23</sup>

The SC would however like to take this opportunity to highlight the need for the Auckland District Law Society and the Real Estate Institute of New Zealand to remedy the terms of ASP 2012(4) so that it no longer places conveyancing professionals in a position which might be perceived as requiring them to breach professional undertakings given during the course of a conveyancing transaction. The current situation is untenable and urgent action is required.

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<sup>18</sup> At [32].

<sup>19</sup> At [35].

<sup>20</sup> At [37].

<sup>21</sup> At [38].

<sup>22</sup> At [41].

<sup>23</sup> At [42].



[33] The Committee concluded its decision by issuing a warning to conveyancing practitioners that they:<sup>24</sup>

... should always exercise professional restraint in their communications with clients to ensure the good standing of the profession is maintained.

### **The application for review**

[34] Mr LM set out four supporting reasons for the application for review:<sup>25</sup>

1. The Committee considered and referred in detail to the two Lawyers Complaints Service Standards Committee determinations provided to it by Ms HR. Mr LM had requested the NZSoC Complaints Service to provide him with copies of the determinations but the Committee declined on the grounds that the Lawyers Complaints Service had not ordered publication of one determination and only limited publication of the other. Mr LM was, therefore, unable to consider and make submissions on the Lawyers Standards Committee determinations. He submitted this constituted a breach of natural justice.
2. Decisions 12586 & 12885 rely upon advice being privileged communication. The Committee failed to consider that the conduct complained of was not in the course of giving legal advice during a dispute between a lawyer and licensed conveyancer but arose after settlement of the transaction, so no privilege would apply. In addition, the Evidence Act 2006 does not make communication between a licensed conveyancer and their client subject to legal privilege.
3. The Standards Committee failed to take into account that an accusation that the complainant was acting unprofessionally and possibly unlawfully is a serious allegation which warrants disciplinary action.
4. The Standards Committee in paragraph [31] supports the view of Ms HR, that the statement made was accurate. The decision does not articulate why the Standards Committee shares the conveyancer's view.

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<sup>24</sup> At [43].

<sup>25</sup> Application for review, Part 7.

## Review

### *Delegation*

[35] The review progressed by way of an applicant only hearing in Auckland on 24 August 2017. It was attended by both Mr LM and Ms HR. Ms HR was accompanied by a support person.

[36] The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to clause 6 of schedule 3 of the Lawyers and Conveyancers Act 2006. The LCRO has delegated Mr Vaughan to report to me, and the final determination of this review, as set out in this decision, is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

### *The Lawyers Complaints Service Standards Committee determinations*

[37] In her response to Mr LM's application for review, Ms HR advised this Office that she had provided copies of the two determinations referred to in the determination to the Standards Committee. Mr LM only became aware of these decisions when he received the determination of his complaint. In the determination, the Committee had referred in some detail to the Lawyers Standards Committee decisions. It also included the names of the parties and other identifying details.

[38] On receipt of the determination of his complaint, Mr LM requested copies of the Lawyers Standards Committees' decisions so that he could "understand the context of the reference to those decisions in this Determination".<sup>26</sup>

[39] The Society of Conveyancers responded:<sup>27</sup>

Dear Mr LM

#### **LM/HR – COMPLAINT C0001**

Thank you for your email of 24 August now referred to the Committee.

In response, they advise;

*"The NZLS ordered no publication of 12885, and only limited publication of 12586. This will be why you cannot access them and why we cannot send a copy to you. On review, the names should not have been given in our references to decision 12586 nor given any details of 12885.*

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<sup>26</sup> Email LM to NZSoC (24 August 2016).

<sup>27</sup> Letter New Zealand Society of Conveyancers to LM (29 August 2016).

*To that end, we withdraw our earlier decision and issue the **attached**.  
We ask you destroy the earlier.*

...”

[40] The Committee then issued a version of its determination with anonymised details of the Lawyers Standards Committees’ determinations.

[41] The copy of the Standards Committee file provided to this Office did not include copies of the two determinations referred to. This Office was eventually able to obtain redacted versions from the Lawyers Complaints Service. When forwarding these, the Lawyers Complaints Service noted:<sup>28</sup>

For the sake of completeness, and consistent with the confidentiality provisions in the Act and associated regulations, we note that these determinations were not disclosed by the Lawyers Complaints Service to the Society of Conveyancers (nor to any other third party).

[42] The Complaints Service provided the decisions to this Office on the basis that: “The determinations are provided to the LCRO on the basis that they will not be disseminated or published further, including to or by the parties to the review application”.<sup>29</sup> Given these conditions, it was not appropriate for the Review Officer or myself to read the Lawyers Standards Committee decisions. That would only serve to exacerbate the breach of natural justice identified by Mr LM.

[43] Given the publication directions by the Lawyers Standards Committee in the two determinations, they should not have been sent to, or considered by, the NZSoC Committee. Any reference to the decisions in that determination should only have incorporated the information included in any publication by the Lawyers Complaints Service.<sup>30</sup>

[44] At the review hearing, the Review Officer advised the parties that neither he nor I would have any regard to the Lawyers Standards Committee determinations for two reasons. The first being the reason raised by Mr LM, and the second being that the Lawyers Standards Committee determinations are not binding on this Office. This Office is obliged to reach its own view on the complaints once an application for review is made.<sup>31</sup>

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<sup>28</sup> Email NZLS to LCRO (17 July 2017).

<sup>29</sup> Above n 30.

<sup>30</sup> It is not known whether any publication in terms of the decision has yet been made.

<sup>31</sup> *Dorbu v Lawyers and Conveyancers Disciplinary Tribunal* HC Auckland CIV-2009-404-7381, 11 May 2011 at [29].

[45] In any event, even if the determination under review was to be overturned for a breach of natural justice, the logical option would be to return the matter to the Standards Committee to reconsider pursuant to s 209(1) of the Lawyers and Conveyancers Act 2006. Any reconsideration would have to be on the basis that the Committee took no note of the Lawyers Standards Committee determinations provided, and that would be impractical in the circumstances. In addition, this Office can complete the review without reference to those determinations and that will “cure” the breach raised by Mr LM.

[46] The parties were advised at the review hearing that the review would proceed on that basis. Because this is an issue which should have been brought to the attention of the Lawyers Complaints Service, the publication orders in this decision include an order for a copy of this decision to be provided to the Lawyers Complaints Service.

*The 18 March email*

[47] Mr LM alleged that Ms HR had advised (or suggested to) her client that:<sup>32</sup>

1. LMN had “asked the Conveyancing Practitioner [Ms HR] to breach obligations to the vendor and the vendor’s bank”;
2. LMN had asked Ms HR to do something “unprofessional and probably unlawful”;
3. LMN was acting unprofessionally and unlawfully; AND
4. LMN “insisted that the vendor pay 1/2 of the cost of the vendor”.

[48] The content of the 18 March email must be examined closely. Ms HR said:

1. “The buyer’s solicitor asked me to do something that I have no authority to do”;
2. “The buyer’s lawyer considered it appropriate to try and get me to breach my obligations to you and your bank”;
3. “What the buyer’s lawyer asked me to do was unprofessional and probably unlawful ...”; and

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<sup>32</sup> Letter LMN to NZSoC Complaints Service (10 May 2016).

4. “It is however unfortunately a solution that the NZ Law Society is recommending (through their guidelines document/ ...) to buying lawyers who do not wish to deal with selling conveyancers”.

[49] Ms HR did not say that Mr LM or LMN was himself/itself acting “unprofessionally” or “probably unlawfully” as Mr LM alleges in his letter of complaint.<sup>33</sup> What Ms HR says is that Mr LM had asked her to act in a particular way. Whether she complied or not was a decision for her to make.

[50] In the email, Ms HR then refers to the fact that Mr LM is adopting a solution recommended by NZLS which she says, is not accepted by NZSoC.

[51] These additional comments put all of the facts before Ms HR’s client, who made no comment, which suggested she considered Mr LM himself was acting unlawfully or unprofessionally. The client’s concern was that the disagreement between Mr LM and Ms HR may have cost her more than what (it would seem) she may have contributed to the alternative settlement arrangements.

[52] Mr LM is concerned that Ms HR had not properly or fully put the whole of the material provided by him, for example, articles by the property law section convenor, before her client. Again, this was a decision for Ms HR to make. Ms HR reported to her client that Mr LM had ‘insisted’ her client pay half the cost of appointing an agent to settle in person with her. Mr LM argues that Ms HR breached her duty of honesty and fairness.

[53] Mr LM was not in a position to insist that Ms HR’s client pay half the cost, but certainly argued forcefully that she do so, referring to the articles authored by the Chair of the Property Law Section. Whilst Ms HR may have overstated Mr LM’s position, a finding of unsatisfactory conduct is not warranted when all of the circumstances are taken into account.

[54] The difference of opinion between the NZLS Property Law Section and the New Zealand Society of Conveyancers is of limited relevance to clients of either a conveyancing practitioner or lawyer. What is important is that clients are not disadvantaged, and both professionals have a duty to act in their client’s best interests. This must necessarily involve acting with some pragmatism and accommodation, and a recognition that the conveyancing profession was established when the Lawyers and Conveyancers Act came into force on 1 August 2008.

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<sup>33</sup> Above n 37 at [3].

[55] For the reasons stated above, I do not consider Ms HR's conduct constitutes unsatisfactory conduct.

*Privilege*

[56] The Standards Committee placed some weight on its view that the 18 March email was a privileged communication between Ms HR and her client and was, therefore, protected as a confidential communication.

[57] Section 54(1) of the Evidence Act 2006 provides:

- (1) A person who requests or obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was—
  - (a) intended to be confidential; and
  - (b) made in the course of and for the purpose of—
    - (i) the person requesting or obtaining professional legal services from the legal adviser; or
    - (ii) the legal adviser giving such services to the person.

[58] The definition of a "legal adviser" in s 51 does not include conveyancing practitioners.

[59] Applying the privilege (ss 53 to 67) provisions of the Evidence Act, it is clear that the 18 March email was not a privileged communication. This fact reinforces the recommendation by the Standards Committee that "conveyancing practitioners should always exercise professional restraint in their communications with clients to ensure the good standing of the profession is maintained".<sup>34</sup>

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<sup>34</sup> Above n 12 at [43].

**General comments**

[60] The Lawyers and Conveyancers Act 2006 recognised the profession of licensed conveyancers. Whilst there may be merit in the stances adopted by each profession, pragmatism demands that it is incumbent on lawyers and conveyancers to acknowledge this, and enable each practitioner to carry out their duties to their client in a spirit of co-operation. If a lawyer or a conveyancer does not adopt such an approach, then it is their respective clients who are affected.

[61] Mr LM was, however, obliged to act in accordance with the terms of the contract and in accordance with recommendations of the Property Law Section. Equally, Ms HR was passing on to her client the views of the NZSoC and adopting the terminology used by the Society.

[62] At the review hearing, both Mr LM and Ms HR agreed that each of them reacted mostly out of frustration borne from the unresolved issues between their respective professional bodies, and that none of the communications between them or in respect of this complaint was intended to be personal, vindictive or obstructive in nature.

[63] It is accepted that Ms HR's language and, therefore, that of the NZSoC was/is inflammatory; Mr LM and his employee were affronted and offended at the slurs on their reputation and character. Mr LM, however, acknowledged that the views expressed by Ms HR were those of NZSoC and were not directed at him in a personal manner.

[64] Ms HR took the opportunity afforded to her at the review hearing to express her personal apology to Mr LM for the impact her communications had on him and his staff. Mr LM accepted Ms HR's expressions of regret.

[65] It is somewhat disappointing that the parties to this complaint find themselves in this position largely through the inability of their respective professional bodies to resolve those issues. Each client has been detrimentally affected by events and that is not in the interests of either party or their clients. However, involving the complaints process of either the New Zealand Law Society or the New Zealand Society of Conveyancers should not be viewed as a means of advancing the impasse.

**Decision**

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

**Publication**

[67] I direct that publication of this decision be made to the New Zealand Law Society and to the Property Law Section of the Society, pursuant to s206(4) of the Act. I also direct that this decision be published with all identifying details anonymised to members of the New Zealand Law Society and the New Zealand Society of Conveyancers.

**Costs**

[68] There will be no order of costs against either party.

**DATED** this 22<sup>ND</sup> day of September 2017



**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:

- LMN Law as the Applicant
- Ms HR as the Respondent
- Standards Committee
- New Zealand Society of Conveyancers
- New Zealand Law Society