

CONCERNING

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

AND

CONCERNING

a determination of the Taranaki Standards Committee

BETWEEN

MS LAIRG

of North Island

Applicant

And

MR CANTERBURY

of North Island

Respondent

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

DECISION

Application for review

[1] The application was made by Ms Lairg (the Applicant) for a review of a decision by a Standards Committee declining her complaint against Mr Canterbury (the Practitioner). The reason for the review application were not altogether clear. The Applicant referred to her original complaint; she also enclosed a copy of a document that had been sent to her partner from the Practitioner's firm who acts for the partner's ex wife more recently, this document set out submissions in relation to a parenting order sought by the ex wife against the Applicant's partner.

[2] The original complaint had been made on the applicant's behalf by her solicitor, who acts not only for the Applicant but also for her partner. Her solicitor raised an allegation of conflict of interest against the Practitioner whose firm was acting for the Applicant's sister and brother in law, and also for her partner's ex wife. The complaint

had arisen from the fact that the Practitioner had acted for the Applicant for a period of six or seven months some years ago, from December 1998 until the middle of 1999 in relation to her separation, after which time he rendered his account to the Legal Services Agency in July 1999 and has not acted for her since.

[3] The Practitioner's firm has, more recently, undertaken work for the Applicant's relations (her sister and brother in law) in a matter involving the Applicant's children. This is a matter that directly affects the Applicant. The Practitioner's firm also acts for her partner's ex wife in proceedings involving access arrangement for their children. These proceedings do not involve the Applicant directly, but could be considered to affect her indirectly insofar as the Applicant has been mentioned in a affidavit sworn by the ex wife.

[4] The Applicant is of the belief that there is a campaign of harassment against her and that the Practitioner is part of this campaign. In her view the Practitioner is actively involved in creating trouble for her. She referred to adverse comments about her in the ex wife's affidavit which, in her view, were encouraged by the Practitioner. She further pointed to the Practitioner's position as a DMHI, and described the personal and professional relationships between the Practitioner and others including the ex-wife, the Applicants former husband and his wife and others. In her view the Practitioner is using information he had obtained from these other sources and advancing his campaign against her via the proceedings against her partner.

[5] A review hearing was conducted with the Applicant on 14 April 2010. Her partner also attended in support. The Practitioner was entitled but not obliged to attend this hearing and elected not to do.

[6] At the hearing the Applicant confirmed that the Practitioner's firm is no longer acting for her sister and brother in law in respect of proceedings involving her children. She confirmed that she had no further interest in pursuing that aspect of her complaint. In these circumstances there was further necessity to consider that part of her complaint.

[7] The Applicant clarified that her review application related to the Practitioner's involvement in proceedings between her partner and his wife. Notwithstanding that another lawyer in the Practitioner's firm acts for the partner's wife, the Applicant believes that the Practitioner has directly involved himself in those proceedings for

purposes relating to his campaign against her. In short, she disagreed with the conclusions of the Standards Committee.

[8] It was put to the Applicant that her professional relationship with the Practitioner ended in 1999, which brought the relationship to an end. She did not agree that the professional relationship between them ended with the termination of the retainer in 1999. She referred to correspondence between the Practitioner and the Official Assignee in 2005/06 when the Official Assignee had requested information about her (as a bankrupt) from the Practitioner. She was critical of the Practitioner's failure to have contacted her in relation to that request. She submitted that the Practitioner's professional responsibilities towards her continued by virtue of that contact. In her view the fact of the Practitioner's communication with the Assignee was evidence of an ongoing professional relationship between them, and consequently his ongoing professional obligation to her.

[9] I do not accept this submission. That a lawyer responds to a request for information by the Official Assignee made under statutory authority does not resurrect a professional relationship that is ended. The evidence makes it clear that the professional relationship between the Applicant and Practitioner ended in 1999.

[10] The focus of the Applicant's complaint appeared to be that the Practitioner should not be acting for her partner's wife because of his continuing professional relationship with her. She perceives this as a situation giving rise to a conflict of interest.

[11] The Standards Committee particularly considered the application of Rule 8.7.1 in relation to the complaint considering the practitioner acting for the applicant's sister and brother-in-law. However, I have already noted that this part of the complaint is now resolved to the Applicant's satisfaction, and requires no further discussion.

[12] The Standards Committee did not consider whether Rule 8.7 was relevant to the proceedings involving the Applicant's partner and his ex wife. The Applicant nevertheless is of the view that the prior relationship between her and the Practitioner (which she considers is current) makes it improper for the Practitioner or anyone in his firm to act for the ex wife.

[13] A lawyer does have an ongoing professional obligation to keep confidential all information gathered from a client, and Rule 8.7 of the Conduct and Client Care Rules

makes provision for a lawyer's obligations towards a client, whether a current or former client. The rule is significantly concerned with information that is held by the Practitioner and aims to ensure that there is no breach of the obligation of confidence that remains, even where the professional relationship has ended.

8.7 A lawyer must not use information that is confidential to a client (including a former client) for the benefit of any other person or of the lawyer.

8.7.1 A lawyer must not act for a client against a former client of the lawyer or of any other member of the lawyer's practice where—

- (a) the practice or a lawyer in the practice holds information confidential to the former client; and
- (b) disclosure of the confidential information would be likely to affect the interests of the former client adversely; and
- (c) there is a more than negligible risk of disclosure of the confidential information; and
- (d) the fiduciary obligation owed to the former client would be undermined.

[14] Rule 8.7.1 specifically contemplates a situation where a lawyer acts for a client against a former client of the lawyer. That is not the case in this situation. The Practitioner's client is the ex wife of her partner. The proceedings are not against the Applicant but against her partner. The fact that the ex wife has made reference to the Applicant in her affidavit does not bring the Rule into play. It is difficult to see how the rule applies. That the client may make a reference to the Applicant in an affidavit cannot alter the fact that the Applicant is not a party against whom any action is being taken. In these circumstances that rule can have no application.

[15] However, even where there is no longer a professional relationship, there remains an ongoing obligation to keep confidential all information about a former client and to not use any part of that information for the benefit of another client. The Applicant considered that the Practitioner had breached this obligation in two ways.

[16] The first referred to information the Practitioner had provided to the Official Assignee. I noted that the Official Assignee's letter of January 2005 was a request made pursuant to Section 73(1) of the Insolvency Act 1967 for information about the Applicant who had been adjudicated bankrupt. The request sought information largely pertaining to financial and business matters. The Practitioner stated that he had informed the Official Assignee that the firm had not acted for the Applicant for a number

of years and confirmed that nothing was owed. The fact that the Practitioner did not seek the prior consent of the Applicant is immaterial where information requests are made pursuant to a statutory provision which overrides section 7 of the Privacy Act as is the case here. This does not disclose any wrongdoing by the Practitioner.

[17] The second way in which she alleged that the Practitioner had breached his duty of confidence to the advantage of the firm's client (her partner's ex wife) was with reference to .an affidavit sworn by the ex wife who had referred to the Applicant. The Standards Committee had noted that no such concerns had been raised throughout the time that the firm had acted for the Applicant's sister and brother in law, and that any information that had been retained was a decade old and must be considered to be of limited relevance.

[18] However, the Applicant contended that the Practitioner used information he had obtained through his professional and personal relationships with other persons, and in relation to the proceedings issued by his firm for the ex wife. The Applicant did not accept that the ex-wife was expressing her own views, but rather, that she had been encouraged by the Practitioner to make the adverse comment as means of harassing the Applicant. However, no evidence has been provided that the ex wife does not personally hold the views she has stated and I can see no basis for implicating the Practitioner is an affidavit that is sworn by a client.

[19] I have seen no evidence of any evidence that the Practitioner or anyone else has failed with regard to protection of the Applicant's personal information arising in the course of the earlier retainer. I therefore agree with the Committee's observations and consider it somewhat difficult to see what information the Practitioner or his firm now holds that would be material to proceedings between the Applicant's partner and his ex wife in respect of access arrangements concerning their children.

[20] It appears that there had been complaints made by the Practitioner to the police about the Applicant which she saw as part of the Practitioner's conspiracy against her. Although there is evidence that has been involved in various difficulties and has been the focus of, no doubt unwanted, attention is not evidence of professional wrongdoing by the Practitioner. I have seen no evidence of a breach of the rules of professional conduct in this matter. There is no evidence of any failure by the Practitioner to observe his duty of confidence. The fact that a lawyer has represented a client does not prevent him from lodging a complaint to the police in appropriate case.

[21] I have also considered whether other rules are more pertinent to the specific allegation that the Practitioner is engaged in a personal campaign against the Applicant. Any lawyer who uses illegal processes for an improper or unlawful purpose, or knowingly assists in using the law or legal process for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation, would be in breach of rule 2.3.

[22] I therefore considered whether there was any evidence to support the Applicant's complaint in terms of this rule which appeared to be more applicable to the complaint. However, I can find no evidence that supports the allegations that the Applicant has made. The Applicant placed some significance on the fact that the Practitioner's name appears on the court documents involved in the proceedings. I agree with the Standards Committee view that the fact that a Practitioner's name appears on Court proceedings is not significant given that the Family Court Rules 2002 require a principal in a firm to be named when filing Court documents.

[23] At the review hearing the Applicant provided copies of additional correspondence that the Practitioner's firm had sent to the lawyer acting for her and her partner, in which the Applicant is mentioned in relation to efforts to communicate over child access arrangements. The mention of the Applicant in a letter written by the Practitioner's firm to her partner's lawyer is not, in my view, evidence of any conspiracy by the Practitioner against the Applicant. The letter simply records concerns expressed by the Practitioner's client about actions of the Applicant that the ex wife sees as creating difficulties with the access arrangements. It is not unusual that a new partner is cited in such applications, and there is no reason to suppose that the matters mentioned in the letter are not concerns held by the ex wife.

[24] In summary I am unable to find any evidence of wrong doing by the Practitioner. I accept that the Applicant feels aggrieved about past events and more recently at having been cited in the proceedings between her partner and his wife concerning their children. However, I have seen nothing that indicates in any way that the Practitioner has been involved in any activity aimed at causing distress to the Applicant. As there is no basis for upholding any of the complaints. the application is declined.

Additional matter- Standards Committee procedures

[25] There was one additional matter that the applicant raised. This related to the identity of the professional standards solicitor who was involved in administering the complaint through the Standards Committee. The Applicant said that this solicitor had acted in a case against her in previous years.

[26] An inquiry was made by this office into the role of the solicitor, in particular whether she had any role in the decision-making process. The solicitor concerned informed me that she played no part in the decision-making process of the Standards Committee, and that her role was to simply record the minutes of the Committee's discussions. She described herself as "a collector and collator of information". In these circumstances I accept that this solicitor had no involvement in the decision-making process.

[27] It is a useful reminder however that Standards Committees, particularly in smaller provincial centres where there may be a greater possibility of conflict of interest or bias concerns arising on the parts of complainants, that consideration should be given to transferring such complaints to a Standards Committee outside their area.

Decision

Pursuant to section 211 (1) of the Lawyers and Conveyancers Act 2008 the decision of the Standards Committee is confirmed.

DATED this 24th day of April 2010

Hanneke Bouchier
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 Lairg as the Applicant
YY as the Applicant's Representative
Mr Canterbury as the Respondent

XX as a related Party
The Taranaki Standards Committee
The New Zealand Law Society