LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2021] NZLCRO 083

Ref: LCRO 220/2020

CONCERNING	an application to review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the [Area] Standards Committee [X]
BETWEEN	**UOY** Applicant
AND	**[AREA] STANDARDS COMMITTEE [X]** Respondent
AND	**SV** Interested Party

DECISION

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

Introduction

[1] In a determination dated 9 November 2020, the [Area] Standards Committee [X] determined that the conduct of Mr UOY, a lawyer practising in [CITY A] and elsewhere, was such that it should be considered by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal), pursuant to s 152(2)(a) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] This followed a complaint that had been made against Mr UOY by his sister, Ms SV.

[3] Mr UOY has applied to review the Committee's determination.

Background

[4] Mr UOY and his sister have been involved in litigation concerning his trusteeship of their now late parents' family trust (the OY Trust) and, relatedly, his conduct as their parents' Enduring Power of Attorney as to property during the latter stages of their lives.

[5] Mr and Mrs OY Snr passed away in May 2017 and July 2018 respectively.

[6] Mr UOY was one of two trustees of the OY Trust. The second trustee was initially a Mr R, but he was replaced at some point by a professional trustee (YRW).

[7] The beneficiaries of the OY Trust include Mr UOY, Ms SV and their sister AQ.[1]

[8] Ms SV's concerns have been that her brother borrowed money from the OY Trust and failed to make interest and principal payments as required, helped himself to trust capital for his own purposes, dishonestly invoiced the OY Trust for services and helped himself to money in their parents' bank accounts when they were alive.

[9] The litigation initiated by Ms SV has included an application to have Mr UOY removed as a trustee of the OY Trust (to which Mr UOY ultimately agreed) and an interlocutory proceeding to obtain information and evidence from Mr UOY about his management of trust funds and their parents' personal funds.

[10] The XYT Trust has since been appointed as a trustee to manage the OY Trust.

[11] Of concern (amongst others) to Ms SV has been an advance of $200,000 to Mr UOY from the OY Trust, to clear mortgage arrears on and allow refinancing of a property owned by a company of which Mr UOY was the sole director (the TOWN A property).

[1] AQ was adopted by Mr and Mrs OY Snr when she was aged four years. There has been litigation as to whether AQ is included in the definition of beneficiaries in the OY Trust. Mr UOY's position was that she was not; Ms SV disagreed. Litigation has apparently resolved that issue in favour of AQ.

[12] Ms SV has alleged that this was an unauthorised advance of OY Trust capital, and one in which Mr UOY as a trustee breached his fiduciary duties to the beneficiaries, not to mention failing to obtain YRW's agreement to the advance.

[13] Mr UOY has disputed the various allegations made by Ms SV.

Complaint

[14] The nub of Ms SV's complaint was that:

(a) Mr UOY should never have agreed to be their parents' attorney, nor a trustee of the OY Trust, given his substantial debts to all three.

(b) Mr UOY has applied OY Trust funds for his own use, without YRW's consent.

(c) Mr UOY, as trustee of the OY Trust, has failed in his fiduciary duties to the other beneficiaries.

[15] Ms SV attached a number of documents to her complaint, including an unsigned loan agreement between Mr UOY and the OY Trust, a judgment of [Judge BC] in the High Court directing (inter alia) Mr UOY's suspension as a trustee[2] and notes of evidence in interrogatories delivered to Mr UOY by Ms SV in the substantive trust proceedings.[3]

[16] As well, Ms SV attached an undated copy of a review carried out by a Chartered Accountant of the OY Trust, and in particular bank transactions over a one-month period between 30 October and 30 November 2018 (the OP review).

Response

[17] Through his counsel Mr LX, Mr UOY responded to the complaint in a letter to the Complaints Service dated 13 December 2019. He submitted that:

(a) The notes of evidence contain "a significant number of errors".

(b) Ms SV appears to be relitigating the Trust proceedings which by then were all but concluded, and involved Mr UOY agreeing to be removed as a trustee of the OY Trust.

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[2] *SV v OY* [2018] (CASE NUMBER).
[3] Before [RK] AJ on [Day Date] 2019.

(c) Otherwise, the nature of Ms SV's complaint was unclear.

Further comment from Ms SV

[18] Commenting on Mr UOY's response, Ms SV responded in an email dated 20 December 2019. She said:

(a) The trust litigation had not been completed, as issues of costs payable to her had not been decided.[4]

(b) The XYT Trustee was "taking up the court proceedings in order to recover the missing funds and execute [Mr and Mrs OY Snrs' wills]."

[19] Ms SV repeated her concern that Mr UOY should not have been appointed as their parents' attorney, nor as trustee of the OY Trust because of his indebtedness.

Notice of Hearing

[20] The Standards Committee resolved to set the matter down for a hearing on the papers. A Notice of Hearing was prepared, dated 12 June 2020, identifying the following issues:

> 1. The issues raised by the alleged conduct set out in the complaint by [Ms SV], in particular:
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> (a) The nature of the alleged conduct itself, including:
>
> (i) Mr UOY's role as trustee of the OY Family Trust; and
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> (ii) Mr UOY's use of monies belonging to the OY Family Trust to assist with refinancing of a property owned by WZA Limited, of which Mr UOY is the sole director.

[21] The Notice of Hearing invited submissions on, amongst other things, "whether Mr UOY's conduct … could amount to misconduct within the meaning of s 7 of the Act such that a referral the Disciplinary Tribunal is necessary…"

[4] Subsequently an award of costs was made in Ms SV's favour by [RK] AJ in *SV v OY* [2020] (CASE NUMBER). Mr OY was ordered to pay Ms SV costs totalling $32,026.

Submissions:

Ms SV

[22] Ms SV's submissions, sent by email dated 21 June 2020, addressing the issues set out in the Notice of Hearing, largely confirm her complaint and her comments on Mr UOY's response to that complaint.

Mr UOY

[23] On behalf of Mr UOY, Mr LX submitted:

(a) The Committee had no jurisdiction to consider Ms SV's complaint, other than under s 7(1)(b)(ii); that is to say, as raising the spectre of misconduct in circumstances where the alleged conduct was unconnected with the provision of regulated services.

(b) The circumstances of the advance to Mr UOY in relation to the Town A property "was the subject of scrutiny in the High Court, wherefore, Mr UOY made an admission of the claim set out on those pleadings thus satisfying the primary purpose of the case (that he should be replaced as trustee by the XYT Trust)".

(c) Mr UOY has promoted and maintained proper standards of professionalism.

(d) Mr UOY's conduct "in respect of any of the said matters in the [Notice of Hearing does not] amount to prima facie misconduct within the meaning of s 7 of the Act, wherefore, such a referral to the Disciplinary Tribunal is unnecessary."

[24] Mr LX also said that determination of Ms SV's complaint might be pre-emptive, given the ongoing Trust litigation and the likelihood that it would "likely resolve in an amicable way later this year."

[25] Mr LX provided further submissions to the Committee, on behalf of Mr UOY, in his letter of 15 July 2020. In summary, those submissions were a request for the Committee to direct the parties to mediation pursuant to s 143 of the Act, as a more appropriate way of resolving the family dispute.

[26] Ms SV responded to that on 9 August 2020, saying that she had "already made it clear … that mediation with Mr UOY is not an option."

The Standards Committee determination

[27] The Committee determined that:

> After inquiring into the complaint and conducting a hearing on the papers, [the Committee] determined, pursuant to section 152(2)(a) of the Act, that the complaint, and any and all issues involved in the complaint, should be considered by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

Application for review

[28] On Mr UOY's behalf, on 7 December 2020 Mr LX filed an application to review the Committee's determination.

[29] He submitted that the Committee's decision was unsound because reasons were not given.

Submissions in response from the Standards Committee

[30] In an email to the Case Manager dated 11 December 2020, the Committee indicated that it did not wish to participate in the review.

Submissions in response from Ms SV

[31] Ms SV submitted that she did not wish to attend the hearing, but asked that "Mr UOY be held to full account for his inappropriate actions."[5]

Nature and scope of review

[32] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[6]

> … 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.
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> The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers

[5] Email from Ms SV to the Case Manager (8 December 2020).
[6] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

> of a Standards Committee or an investigator and seek and receive evidence. These powers extend to "any review" …
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> … 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.

[33] More recently, the High Court has described a review by this Office in the following way:[7]

> 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.

[34] 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 the available material afresh, including the Committee's decision; and

(b) provide an independent opinion based on those materials.

Hearing in person

[35] The review application was progressed before me at an applicant only hearing in Auckland on 1 June 2021. Mr UOY appeared together with his counsel Mr LX.

[36] Prior to the hearing I had indicated to Ms SV that she was not required to attend the hearing, but that if matters arose during the course of it about which I required submissions from her, I would adjourn the hearing part-heard and give her an opportunity to make those submissions.

[37] I record that I have carefully read Ms SV's complaint and supplementary material, Mr UOY's responses to the complaint, the Committee's Notice of Hearing and the parties' submissions about that, as well as the Committee's determination.

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

[38] As well, I have read Mr UOY's review application and the submissions which accompanied that, as well as Ms SV's response to the review application.

[39] Finally, as well as hearing from Mr LX, I also heard directly from Mr UOY.

[40] There are no additional issues or questions in my mind that necessitate any further evidence, information or submissions from any of the parties.

Statutory framework for the prosecution decision

[41] The Act provides for two categories of conduct which may attract disciplinary sanction — misconduct and unsatisfactory conduct.[8] The former is the more serious and can lead ultimately to a practitioner being struck off by the Tribunal.[9]

[42] Standards Committees may only make findings about the lesser category of unsatisfactory conduct.[10] When confronted with a complaint, including an own-motion investigation,[11] in which the spectre of misconduct is present, a Standards Committee may direct it to be considered by the Tribunal,[12] Thereafter the Committee must frame and lay any appropriate charge with the Tribunal and serve those charges on the practitioner and any complainant.[13]

[43] Significantly, when directing a complaint to be considered by the Tribunal, a Standards Committee is not obliged to provide reasons. This is evident from the language of s 158 of the Act, which requires reasons to be given only when a Standards Committee makes a finding of unsatisfactory conduct or determines to take no further action on a complaint.

[44] It is generally a fundamental tenet of natural justice that decision-makers provide reasons. At first blush it may seem inconsistent with that principle that a Committee with a statutory power of decision-making is not obliged to provide reasons for a decision it makes.

[45] Indeed, that was the thrust of the submissions which accompanied the review application.

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[8] Sections 7 and 12.
[9] Section 244.
[10] Section 152(2)(b).
[11] Section 130(c).
[12] Section 152(2)(a).
[13] Section 154.

[46] In *Orlov v New Zealand Law Society* the Court of Appeal gave careful consideration to the question as to whether a Standards Committee was required to provide reasons for its decision to refer a matter to the Tribunal, and concluded that "it is clear from s 158 that a Standards Committee is not required to give reasons for a decision made under s 152(2)(a) to refer a matter to the Tribunal."[14]

[47] Further, the Court noted that if Parliament had intended that a Committee be required to provide reasons for a prosecution referral, then it would have expressly said so.[15]

[48] It is also important to note that in *Orlov* the Court of Appeal held that there is no threshold test to meet before a Standards Committee makes a prosecution decision.[16]

[49] Moreover, because Standards Committees may not make findings that particular behaviour is misconduct, the decision to prosecute is not a merits-based decision. In effect when directing the prosecution of a practitioner a Standards Committee is saying, "this behaviour may constitute misconduct; if so, only the Tribunal may determine that question".

[50] Furthermore, the Tribunal may make that determination only after charges have been laid and a hearing conducted in that forum. The hearing will include parties giving evidence and being cross-examined — indeed, a traditional first-instance hearing procedure.

[51] It is only at the conclusion of that process that a merits-based decision may be made by the Tribunal.

[52] Nevertheless, whilst a Standards Committee is not required to provide reasons for its decision to refer a matter for prosecution before the Tribunal, there is an express right of review conferred by the Act.[17]

Role of the LCRO on reviewing a prosecution decision

[53] In *Orlov* the Court of Appeal commented "there is now oversight of the referral decision by the independent LCRO".[18]

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[14] *Orlov v New Zealand Law Society* [2013] NZCA 230, [2013] 3 NZLR 562 at [98].
[15] At [99].
[16] At [53].
[17] Section 193.

[54] In considering applications to review a decision to prosecute, Review Officers in a number of decisions have observed "that the general position in common law jurisdictions is to take a very restrictive stance in respect of the reviewability of a decision to prosecute, observing that the prosecutor's function is merely to do the preliminary screening and to present the case".[19]

[55] Those cases have identified the principles set forth in the various Court decisions where a decision to prosecute might be revisited. These include situations in which the decision to prosecute was:

(a) significantly influenced by irrelevant considerations;

(b) exercised for collateral purposes unrelated to the objectives of the statute in question (and therefore an abuse of process);

(c) exercised in a discriminatory manner;

(d) exercised capriciously, in bad faith, or with malice.

[56] In addition, it was noted in the *Rugby* decision that "if the conduct was manifestly acceptable then this might be evidence of some improper motivation in the bringing of the prosecution".[20]

[57] More recently the High Court when reviewing a decision of this Office in which it had dismissed an application for review of a Standards Committee's decision to prosecute a practitioner, has emphasised that a Review Officer must bring to its assessment of a decision to refer, a robust and independent judgement as to the appropriateness of the Committee's decision to prosecute. Fogarty J held the following:[21]

> [23] The purpose of a review by the LCRO is to form a judgment as to the appropriateness of the charge laid in the prosecutorial exercise of discretion by the Standards Committee. It is as simple as that. ... I agree ... that "a review by the LCRO (should be) 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. I agree also there is room in that review for the LCRO to identify errors of fact.

[18] *Orlov v New Zealand Law Society*, above n 14, at [54](d).
[19] *Rugby v Auckland Standards Committee* LCRO 67/2010 (12 July 2010) at [3].
[20] At [5].
[21] *Zhao v Legal Complaints Review Officer* [2016] NZHC 2622.

[58] Fogarty J also observed that "a critical question for the LCRO is whether the degree of gravity of the matter should justify the Standards Committee exercising the power to refer [conduct] to the Tribunal".[22]

Discussion

Charges

[59] As at the date of the review hearing, Mr UOY had not been served with any charges laid by the Committee. I infer from this, that charges have not yet been filed.

[60] The Committee's determination is dated 20 November 2020. The hearing proceeded before me on 1 June 2020; i.e. roughly six to seven months after the Committee issued its determination.

[61] Section 154 of the Act sets out the procedure to be followed by a Committee when a determination is made to refer a complaint or matter to the Tribunal.

[62] In simple terms, the Committee must frame and lay any charge with the Tribunal and "give notice of [the determination to refer a complaint or matter to the Tribunal] and a copy of the charge to the person to whom the charge relates."[23]

[63] The section does not say that giving notice of the determination and a copy of the charge must occur simultaneously, though it is arguable that this is what is intended.

[64] Without deciding that issue however, it would seem to me that as a matter of fairness to both lawyer and complainant, at the very least the two events – giving notice of the determination and giving a copy of the charge – should occur within a reasonably short space of time.

[65] Both parties have an acute interest in knowing the outcome of a referral to the Tribunal. The stress for both associated with that process, goes without saying.

[66] Indeed at the hearing before me, Mr UOY observed that he still did not know what charge or charges he was facing.

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[22] At [25].
[23] Section 154(1)(b) of the Act. Section 154(1)(c) of the Act requires a Committee to give the same information to a complainant.

[67] A space of approaching seven months after the notice of determination has been given, with still no charges having been given to the parties, presents to me as less than ideal.

Analysis:

Lack of reasons

[68] Mr UOY's review application was initially framed as challenging the Committee's determination for the lack of any reasons.

[69] At the commencement of the hearing I drew to Mr LX's attention to both the language of s 158 of the Act, and the effect of the Court of Appeal's judgment in *Orlov* (discussed by me above at [46]–[48]).

[70] Mr LX accepted that this must be the correct legal position, and so moved to argue what he described as "Plan B".

Mediation

[71] In essence, this submission was that the context of Ms SV's complaint about Mr UOY was a long-standing and bitter family dispute between brother and sister, which had no real place in the lawyers' disciplinary framework. The related litigation had all been resolved.

[72] Mr LX referred to the submissions that he had made to the Committee, essentially noting the private nature of the dispute, imploring a problem-solving approach and inviting the Committee to direct the parties to mediation, where all of the background family issues could be aired and resolved.

[73] Mr LX acknowledged that Ms SV appears to have no interest in this approach.

[74] I suggested to Mr LX that this strategy for dealing with Ms SV's complaint may have had its limitations, given what appeared to be a clear signal from the Committee in its Notice of Hearing as to the conduct issues about which it sought submissions.

The issues identified in the Notice of Hearing

[75] It bears setting out again the issues identified in the Notice of Hearing:

> 1. The issues raised by the alleged conduct set out in the complaint by [Ms SV], in particular:

(a) The nature of the alleged conduct itself, including:

(i) Mr UOY's role as trustee of the OY Family Trust; and

(ii) Mr UOY's use of monies belonging to the OY Family Trust to assist with refinancing of a property owned by WZA Limited, of which Mr UOY is the sole director.

[76] The conduct issues are, broadly, a generic concern about Mr UOY's management of the OY Trust and a more targeted concern about Mr UOY's application of OY Trust funds for his own benefit in relation to the Town A property.

[77] I suggested to Mr LX, and to Mr UOY, that the Committee was undoubtedly concerned that as a lawyer – albeit not providing regulated services at the relevant times – it might be expected that Mr UOY would be scrupulous in his dealings with another's money (in this case, the funds held by the trustees for the benefit of the beneficiaries of the OY Trust).

[78] The Committee's reference in its Notice of Hearing to whether the conduct identified "could amount to misconduct within the meaning of s 7 of the Act", plainly engages that concern.

Mr UOY's substantive response to the issues

[79] Responding substantively to the complaint issues, at the hearing Mr UOY volunteered that the $200,000 advance to him from the trust funds, was "a properly documented loan" and that he believed that YRW was aware of that loan (and others). He said that there had been email exchanges and discussions with YRW in which approval for the $200,000 advance had been given.

[80] Mr UOY acknowledged that he was one of the beneficiaries under the OY Trust, as well as being a trustee. He could not say whether the trust deed required unanimity in trustee decisions, but he accepted that, as this is a conventional approach, the OY Family Trust Deed would probably have required that of the trustees.[24]

[81] Mr UOY did not have a copy of the OY Family Trust Deed with him at the hearing, and nor, it seems, was a copy provided to the Committee.

[82] Nor did Mr UOY have copies of the email exchanges with YRW in which, he has said, that trustee authorised the $200,000 advance to him.

[24] In her complaint Ms SV referred to the need for "joint signatures" but it is not entirely clear from her complaint whether she is referring to the Enduring Powers of Attorney in existence whilst her parents were alive, or the provisions of the OY Trust deed.

[83] Mr UOY seemed to suggest that this information existed and could be made available, although it is apparently – as he described it – "buried" in substantial files relating to the years of dispute with Ms SV.

[84] The above summary of Mr UOY's evidence is, it appears, the essence of his response to the complaint that he had unlawfully helped himself to trust funds.

[85] This was not put before the Committee, either in a general submission or by reference to any supporting documents.

[86] That being said, when pressed by me, Mr UOY was unable to recall whether, for example, the trustees signed a resolution authorising the advance and did so after properly considering Mr UOY's request for that advance in the context of the trustees' fiduciary duties to all of the beneficiaries.[25]

[87] I would have thought that particular care would be required when a trustee who is also a beneficiary, requests a distribution to themselves, to ensure that there is a full and accurate record of the transaction and the reasons why the trustees approved it. The amount involved - $200,000 – was not insignificant.

[88] Mr UOY referred, as part of his claim that this was a "properly documented loan", to a loan agreement between himself and the OY Trust, in which this advance (and two other totalling a little over $130,000) are recorded as loans.[26] He also referred to agreeing to pay interest on these loans, at a rate higher than prevailing commercial rates.

[89] The document to which Mr UOY refers is the unsigned deed dated 18 November 2018, provided to the Complaints Service by Ms SV as part of her complaint. Mr UOY said that he thought that the deed had been properly executed, but did not know where that version might be. He anticipated that it would be amongst the substantial files he holds.

Refer back to the Committee?

[90] The above evidence having now been provided by Mr UOY, Mr LX submitted that I should direct the Committee to reconsider Ms SV's complaint, but this time in

[25] I note that in the OP review, it was said that "no documentation to authorise [payments totalling $331,986 (which includes the $200,000 advance for the TOWN A property)] has been sighted."
[26] Ms SV attached this document to her complaint.

possession of relevant documents and affidavit evidence from Mr UOY, to substantiate his position that at all times he acted lawfully and with the appropriate authority.[27]

[91] I pointed out to Mr LX that the time for Mr UOY to have done this, was – at the very latest – upon receipt of the Committee's Notice of Hearing.

[92] That Notice, in my view, makes explicit reference to the conduct issues at large, including reference to the use of OY Trust funds to refinance the TOWN A property.

[93] Mr LX explained that the strategy at the time he was instructed to respond to Ms SV's complaint – one which he says has been prominent for some considerable time – was to try and bring about closure of what has essentially been a family dispute. It was for this reason that his final letter on Mr UOY's behalf to the Committee, made a plea for mediation.[28]

[94] I acknowledge that in a general sense, in family disputes, this is not an unreasonable strategy. In the present matter, it is a strategy that would undoubtedly have been based upon Mr UOY's instructions. This approach is something that Mr UOY emphasised at the hearing and said that he had been endeavouring to accomplish for some considerable time.

[95] Review Officers should be slow to criticise counsel's strategy in litigation (including complaints), unless there are compelling reasons to do so. After all, counsel and their client are intimately familiar with the slings and arrows of their litigation. At best, a Review Officer can only ever hope to achieve an overview of the litigation.

[96] Nevertheless it presents as puzzling as to why Mr UOY, when faced with a Notice of Hearing which raised explicit reference to the TOWN A property refinancing, as well as to more general issues about Mr UOY's trusteeship of the OY Trust, did not immediately think to inform the Committee what he told me at the review hearing: that this was a "properly documented loan" and that he believed, on the basis of email exchanges with YRW, that there was appropriate trustee authorisation of that loan.

[97] I consider that it would be contrary to principle for me to accede to Mr LX's submission that I direct the Committee to reconsider Ms SV's complaint thereby giving

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[27] Section 209 of the Act.

[28] Letter from Mr LX to the Complaints Service (15 July 2020). I observe that Ms SV's response to that, copied to Mr LX, was an emphatic rejection of mediation (letter from Ms SV to the Complaints Service (9 August 2020)).

Mr UOY an opportunity to put his substantive defence to that complaint, to the Committee.

[98] To do so would be to give succour to a misplaced strategy, advanced in circumstances where the Committee had clearly identified its conduct concerns; not to mention Ms SV's emphatic rejection of mediation.

[99] There can be no prejudice to Mr UOY by my declining to refer this matter back to the Committee, as he will of course have his opportunity to put all relevant material before the Tribunal.

[100] Moreover, as I have outlined above, the circumstances in which a Review Officer might interfere with a Committee's decision to lay charges in the Disciplinary Tribunal are rare, and generally arise when the Committee has misfired in some way.

[101] The matters raised before me by Mr UOY are, in my view, proper ones for the Tribunal to consider. They require careful assessment of all of the evidence, and matching that evidence against the legislative standards of misconduct, negligence or incompetence and unsatisfactory conduct to see which, if any, has been engaged by the alleged conduct.

[102] Only the Tribunal may carry out that function and determine the gravity of that conduct.

Conclusion

[103] A Standards Committee's power to refer a practitioner to the Tribunal derives from s 152(2) of the Act. The Standards Committee may make a referral if it considers that concerns have arisen which, if proven, could lead to a misconduct finding.

[104] All that a Standards Committee needs to be satisfied of is whether the conduct in question, if proven, is capable of constituting misconduct. It does not fall to the Standards Committee to determine whether the conduct in question is misconduct.

[105] The issue I am required to consider is whether there is any proper basis for interfering with the Committee's decision to refer Mr UOY's conduct to the Tribunal for prosecution.

[106] As Fogarty J held in *Zhao*, I must robustly come to my own view of the fairness of the substance and process of the Committee's prosecution decision.[29]

[107] I have given all of the material on the Standards Committee file, careful consideration. This includes examining the processes it adopted when making the decision to prosecute. Nothing about those processes raise any cause for concern.

[108] I see no reason to interfere with the decision of the Standards Committee to lay a charge before the Lawyers and Conveyancers Disciplinary Tribunal.

Decision

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

Anonymised publication

[110] Pursuant to s 206(4) of the Act, this decision is to be made available to the public with the names and identifying details of the parties removed.

DATED this 03rd day of June 2021

R Hesketh
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 UOY as the Applicant
Mr LX as the Applicant's counsel
Ms SV as an interested party
[Area] Standards Committee [X]
The New Zealand Law Society
Secretary for Justice

[29] *Zhao v Legal Complaints Review Officer,* above n 21, at [23].