

CONCERNING

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

AND

CONCERNING

a determination of the National Standards Committee of the New Zealand Law Society

BETWEEN

Vincent Siemer
of Auckland
Applicant

AND

David Collins
of Wellington
Respondent

DECISION

[1] Mr Siemer complained to the New Zealand Law Society about the conduct of Mr Collins. Mr Collins is the Solicitor General of New Zealand and I will refer to him as such. The essence of the complaint is that the Solicitor General acted inappropriately in seeking that Mr Siemer be committed to prison for contempt of an injunction against him restraining him from publishing certain material.

[2] Mr Siemer has had a number of orders made against him in the courts in respect of statements he has made (predominantly by publication on certain websites) about Mr Stiassny, an accountant who had acted as receiver for a company Mr Siemer was involved with. Those orders were initially injunctions which restrained Mr Siemer from making the statements which were considered objectionable. One such order was made by Ellen France J on 5 May 2005. Other proceedings between Mr Stiassny and Mr Siemer relating to the publication of statements by Mr Siemer about Mr Stiassny have occurred.

[3] In 2007 the Solicitor General considered that Mr Siemer was in continual breach of the orders of the Court in a way which constituted a serious contempt. In early 2008 the Solicitor General applied to the Court for Mr Siemer to be found in contempt of the Court and to be committed to prison until further order of the Court.

[4] An order to imprison Mr Siemer for six months was made by the High Court on 8 July 2008. Mr Siemer appealed that decision and was successful to the extent that the Court of Appeal quashed the fixed term of imprisonment and replaced it with a term of imprisonment not exceeding six months subject to the proviso that Mr Siemer would be released immediately he complied with the injunction and provided an undertaking to the Court that he would continue to do so. Bail was granted. The matter was appealed to the Supreme Court. That appeal is yet to be heard. It is understood that bail continues.

[5] Mr Siemer complained to the New Zealand Law Society that the Solicitor General acted inappropriately in a number of ways. The complaints includes: that the Solicitor General improperly sought the imprisonment of Mr Siemer on the basis of incorrect information in respect of the websites kiwifirst.com and kiwisfirst.org; that he inappropriately contacted the webhost of the websites seeking that they be edited; and that he inappropriately acted to prevent a Parliamentary inquiry;

[6] In a decision of 9 December 2009 the National Standards Committee concluded that the conduct of the Solicitor General was not in breach of any professional obligations and resolved that it was not necessary or appropriate for any further action to be taken on the complaint. That decision provided considerable detail about the background to the complaint that I do not propose to reproduce here.

[7] Mr Siemer sought a review of that decision. That review was conducted on Wednesday 27 January 2010. Mr Siemer was heard in person. The Solicitor General was not required to attend that hearing and did not attend.

The Application for Committal

[8] At the hearing Mr Siemer focussed on his allegation that it was inappropriate for the Solicitor General to have sought an order of the Court committing him to prison for contempt. In light of this, I will focus on this in the application for review.

[9] Mr Siemer's complaint is based on a suggestion that the websites which were claimed to be in breach of court orders by the Solicitor General in his application of 28 January 2008 were in fact not in breach. This is at odds with the findings of the High Court which had the content of the websites before it and at para [90] of its decision of 8 July 2008 found it provided beyond reasonable doubt that Mr Siemer's contempt of Court had continued since 13 July 2007.

[10] Mr Siemer argued that I should not take account of that finding and that I should require the Solicitor General to produce evidence to show that there was a breach of the injunction at the time. He argued that the Solicitor General had successfully misled

the Court and that I should not be timid in examining his conduct simply because it resulted in the Court finding against Mr Siemer. To this end transcripts of evidence in the High Court have been provided to me. I have read those transcripts but I do not find them particularly useful.

[11] If the decision of the Court is based on an error the proper forum for correction of that error is appeal. Mr Siemer, in his complaint and this application for review is fundamentally arguing that the High Court (and the Court of Appeal) are wrong.

[12] It is entirely inappropriate for me to revisit on a review of a complaint against a lawyer a finding of fact of the High Court, let alone one which has been the subject of an appeal. The conduct of a lawyer in court may properly be the subject of a complaint and discipline in some cases. However, in this case Mr Siemer is seeking to argue that the very basis for the decision of the Court is flawed. This is a collateral attack on the decision of the Court. It is not appropriate for a complaints procedure to be used to undermine or revisit a decision of the Court. That is the function of the appeal process.

[13] In so far as Mr Siemer has asked me to revisit the findings of the High Court I decline to do so.

[14] It is also the case that the conduct which is complained against occurred in open court and was therefore subject to the scrutiny of the Court. Had the conduct of Mr Collins been inappropriate the High Court and the Court of Appeal had an opportunity to comment on it. This did not occur. This fact was properly referred to by the Standards Committee.

[15] The Standards Committee in its decision considered the conduct of the Solicitor General more broadly and concluded that there was no evidence of unprofessional conduct in respect of the committal proceedings. I have heard from Mr Siemer, examined the material that was before the Standards Committee, and read the transcript of evidence of the High Court (including that of the Solicitor General). I conclude that the Standards Committee properly considered this matter and the conclusion that it reached was reasonable and proper.

Communications with Webhost

[16] Mr Siemer, in his application for review, also referred to the Solicitor General's conduct in contacting the webhost in respect of the websites. In those communications the Solicitor General sought to have certain information removed from the websites by the webhost. Mr Siemer referred to this in his application for review as "unlawful demands in a legal capacity to attack a lawful business". The Standards Committee

considered that aspect of the complaint and found that the Solicitor General had acted appropriately.

[17] Mr Siemer did not raise this aspect of the complaint at the hearing of the review. However, for completeness I have reviewed this finding of the Standards Committee. I conclude that the Standards Committee properly considered this matter and its conclusion was a reasonable and proper one.

Parliamentary Inquiry

[18] Mr Siemer did not raise any matters relating to the aspect of the complaint relating to the Parliamentary Inquiry in his application for review. Accordingly the finding of the Standards Committee that an allegation of contempt of a Parliamentary Committee is a matter for Parliament itself is upheld.

Decision

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

Publication

[20] I consider that the publication of this decision on the Ministry of Justice website is in the public interest, largely due to the conclusion that It is not appropriate for a complaints procedure to be used to undermine or revisit a decision of the Court. In light of the fact that the background of this complaint is well known to the public it would appear to be futile to attempt to conceal the identity of the parties. Should either party object to this publication of the decision in the way contemplated submissions should be made within 10 working days.

DATED this 3rd day of February 2010

Duncan Webb
Legal Complaints Review Officer

In accordance with s.213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Vincent Siemer as Applicant
David Collins QC as Respondent
The National Standards Committee
The New Zealand Law Society