

CONCERNING

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

AND

CONCERNING

a determination of the Southland Standards Committee

BETWEEN

OC

Applicant

AND

SOUTHLAND STANDARDS COMMITTEE

Respondent

DECISION

Background

[1] The Southland Lawyers' Standards Committee received numerous complaints against Ms OC(the Applicant). These came from former clients or their family, her colleagues working in the same area, and the Ministry of Justice.

[2] The complaints all related to the Practitioner's management of her law practice, her ability to take or follow instructions from clients, her knowledge of the relevant law and legal processes, and knowledge of Court procedures and court conduct. More specifically, the complaints alleged that the Practitioner had acted without instruction or had not followed instructions, had not communicated with her clients in a timely way, was incompetent and lacked knowledge of the relevant law and legal processes, and was unprofessional in her handling of her clients and interactions with colleagues. There were also complaints about the Practitioner's conduct in the Court, and one complaint alleging that she had lied to a Judge concerning advice she had given.

[3] The Standards Committee sought comment from other senior colleagues in the local area about the Applicant's professional performance; the additional information

obtained by the Standards Committee through its enquiries led to additional own-motion complaints being notified to the Practitioner.

[4] The Standards Committee issued eight separate decisions, in each case determining that the complaints be considered in the Disciplinary Tribunal. The Committee observed that the collection of complaints had common themes, were backed up by comments from other well respected lawyers, and repeated difficulties that had previously come before the Committee, reflecting a pattern of conduct that raised questions about the Practitioner's fitness to practice.

[5] The Standards Committee considered that the Applicant had, in her professional capacity, been negligent or incompetent to such a degree and of such frequency as to reflect on her fitness to practise and that the negligence and incompetence had brought the profession into disrepute. It was the view of the Standards Committee that these complaints should be considered at the Tribunal.

Review application

[6] The Practitioner sought a review of the decisions to prosecute. A review hearing took place on 19 June, attended by the Practitioner.

[7] Also participating in the review was Mr PX as Counsel for the Standards Committee. The Applicant asked that I record her objection to Mr PX's participation, (which I do now) but she was informed that the Standards Committee was entitled to be represented, and by Counsel.

[8] The Applicant was advised about the limited grounds for review for a prosecutorial decision as have been articulated in prior LCRO decisions. LCRO 133/2009 provides a useful analysis of the nature of the limited scope of review of prosecutorial decisions, to circumstances where a Standards Committee decision 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.

[9] The Applicant submitted that the decisions of the Standards Committee were tainted in all respects with reference to the above categories. However, no part of her

evidence related to any of those grounds, nor supported any other basis for challenging any of the decisions.

[10] The Applicant's main focus was on the motives, as she perceived it, of the complainants, and also what she perceived as a concerted effort on the part of local lawyers to exclude her and criticise her professional performance. The Applicant also spoke at some length about her views of the legal community out of which some of the complaints arose.

[11] I do not intend to traverse these submissions in any detail, and need only note that the Practitioner takes a different view of nearly all of the information provided by the various complainants, as well as speculating on the motives of those who provided information, or sent complaints, to the NZLS.

[12] Throughout the review hearing efforts were made to direct the Applicant back to focussing on the available grounds for review. She preferred to focus on motives of the various complainants, and her history as a law practitioner.

[13] Mr PX, for the Southland Standards Committee, addressed the basis of the Standards Committee own-motion complaints following views the Committee had sought from two local senior practitioners. This step was, he said, taken to obtain a greater understanding or clarification of the issues before the Committee. The information received by the Committee led to further own-motion complaints, which Mr PX submitted were justified in the overall circumstances.

[14] This review involves eight decisions to prosecute. The Applicant was critical of what she perceived to be the limited extent of the Committee's enquiries but my own observation is that the Standards Committee went to some lengths to comply with requests from the Applicant as to the enquiries it should make. Unusually this involved making enquiries from some Judges about whether they were willing to comment on the Practitioner's court performance. For various reasons very little information was able to be obtained and none was perceived useful by the Committee to its considerations.

[15] At the review hearing I informed the Applicant that none of the grounds that she had discussed for her review, or in the course of the review hearing, were pertinent to the grounds of review that were available. I informed her that the issues she had discussed or raised in the course of the review hearing were matters that she could raise before the Tribunal.

[16] I have carefully considered all of the Applicant's information, but in my view none of it can properly support a review of a prosecutorial decision. I also reviewed the Standards Committee file to satisfy myself as to procedural matters. I have found no reason for criticising the Standards Committee's decision.

[17] The Applicant was informed at the hearing that there was no basis for interfering with the Standards Committee's decisions in this case. Mr PX also stated that charges had been framed and were soon to be served on the Applicant.

[18] The Applicant informed me that she had surrendered her practising certificate, and can no longer work as a lawyer or in any other capacity at this present time. However, this does not prevent these charges being heard in the Disciplinary Tribunal.

Decision

Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decisions of the Standards Committee are confirmed.

DATED this 27th day of June 2012

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:

OC as the Applicant
The Southland Standards Committee as the Respondent
PX as Representative of the Respondent
The New Zealand Law Society