

CONCERNING

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

AND

CONCERNING

a determination of the [North Island] Standards Committee [X]

BETWEEN

JK

Applicant

AND

OC

Respondent

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

DECISION

Introduction

[1] Mr JK applied on 27 August 2013 for a review of the Standards Committee decision of 25 July 2013 in which the Standards Committee determined to take no further action in respect of Mr JK's complaints against Mr OC.

Background

[2] This complaint has a lengthy history.

[3] Mr JK, a police officer, was before the Court facing a serious criminal charge. He was acquitted on that charge.

[4] That was not the end of the matter for Mr JK. His conduct became the subject of an internal police disciplinary hearing.

[5] Mr OC acted for the Crown on the prosecution of the criminal proceedings, and as counsel for the Police at the Disciplinary Tribunal proceedings.

[6] The Tribunal proceedings did not progress to a conclusion. Before the hearing had concluded, Mr JK elected to resign from the force.

[7] In March 2009, Mr JK lodged the first of his complaints against Mr OC. Those complaints were described by the Committee pursuing inquiry into the complaints as being, in general terms, complaint that Mr OC had “made a variety of statements and written submissions to various Courts, Judges, and a Tribunal adjudicator, which Mr JK alleges were deliberately false and misleading”.¹ Further, Mr JK alleged that Mr OC’s cumulative actions amounted to an attempt to pervert the course of justice.

[8] In addition to filing complaints with the Law Society Complaints Service, Mr JK pursued complaint against Mr OC with various regulatory bodies including the Police, the Independent Police Conduct Authority, the Police Disciplinary Tribunal, and the Solicitor-General.

[9] Mr OC’s conduct was the subject of a police investigation. In July 2009, that investigation concluded that:²

There is no evidence to support [Mr JK’s] complaint of criminal misconduct against Mr OC or the six police officers mentioned in this complaint. Therefore this complaint has deemed to be “not upheld”.

[10] The Committee concluded that as none of the authorities investigating complaints into Mr OC’s conduct had determined that there was evidence to support the serious allegations made, no further action should be taken on the complaint.

[11] Mr JK lodged a further complaint with the Complaints Service in September 2010.

[12] At the heart of the second complaint was allegation Mr OC had:

- Misled the Disciplinary Tribunal in relation to disclosure of documents.
- Misled the Tribunal in advancing argument that Mr JK had been the subject of an internal police enquiry.
- Erroneously advised the Tribunal that he had provided documents to Mr JK.

[13] The Committee elected to take no further action on Mr JK’s second complaint, determining that the complaint raised no fresh matters which would justify further inquiry.

¹ [South Island Standards Committee] [x] decision, 25 September 2009 at [1].

² At [7].

[14] In January 2013, Mr JK initiated his third series of complaints against Mr OC, those complaints arising out of the same events which had precipitated the 2009 complaint.

[15] The 2013 complaints alleged that:

- Mr OC had behaved in an unethical manner of such degree as to approach a level of impropriety which could properly be described as corruption.
- Mr OC had advanced argument that various documents existed when that was not the case.
- Mr OC had misled the Court in allowing evidence of cell phone records to be admitted, when he knew those records were misleading.

[16] The Committee noted that Mr JK had referred the allegations, or similar allegations made against Mr OC to the Complaints Service and to a number of agencies including:

- The Police;
- The Privacy Commissioner;
- The Ombudsman;
- The Solicitor-General;
- The Commissioner of Police; and
- The Independent Police Conduct Authority.

[17] The Committee enquiring into the third set of complaints noted that Mr JK had been pursuing his complaints against Mr OC for four years.

[18] The Committee concluded that no new issues had been raised, and expressed concern that Mr JK's practice of pursuing repetitive complaint could amount to an abuse of process. It was the Committee's view that:³

... the continued allegations made by Mr JK about Mr OC's integrity have not been found to have any basis. The time is overdue for the making and publication of these allegations to cease.

³ [North Island] Standards Committee [X] decision, 30 April 2013 at [16].

[19] The Committee's decision of 30 April 2013 gave clear indication that the Committee considered that enough was enough, and that it was time for Mr JK to desist from pursuing his complaints against Mr OC.

[20] Mr JK clearly did not agree with the Committee. Further complaints were lodged. Those complaints were considered by the [North Island] Standards Committee [X], and the subject of a determination from that Committee delivered on 25 July 2013. It is that decision which is the subject of this review.

The Complaints and the Standards Committee Decision, 25 July 2013

[21] Two complaints were lodged by Mr JK. The first of these made complaint that:

- The Standards Committee did not answer Mr JK's question/complaint raised in an earlier complaint.
- Mr JK wants Mr OC to "prove (his) allegations are wrong" and supply the names of the police he returned the documents to.
- Mr OC has made corrupt statements when he says he has returned documents.
- Mr OC should be required to provide Mr JK with a copy of the signed interview statements and a copy of the agreed statement of facts.
- Mr OC should be required to prove that Mr JK's statements of fact are wrong.

[22] The second complaint alleged that:

- Mr OC has not produced any documents to prove Mr JK's allegations of negligence and criminal dishonesty are wrong.
- Mr OC misrepresented on five occasions that he had disclosed all documents to the Tribunal.
- There was a Tribunal hearing without an internal process being held.
- Mr OC stated that Mr JK had been involved in an internal process.
- Mr OC stated that the Tribunal hearing was being held in response to an "internal written complaint" when that was not the case.

- Mr OC refused to supply copies of any documents held regarding the internal process.
- Mr OC intentionally lied to the Chair of the Tribunal.
- Mr OC informed the Court he was relying on sworn testimony of Detective X that Mr JK had made 67 phone calls to a girl when that was not the case.
- Mr OC made submissions without checking the accuracy of sworn testimony.
- Mr OC advanced the proposition that anomalies in the cell phone data could be explained by Mr JK having altered them, and in doing so was attempting to pervert the course of justice.
- Mr OC stated he had supplied cell phone data and all associated documents when he had not done so.

[23] The Committee's decision considered under the heading of "new complaint" addressed allegation by Mr JK that Mr OC had:

- Claimed he had disclosed all of the documents to Mr JK for the Tribunal hearing.
- Claimed he had given those documents back to unnamed police staff when that had not occurred.

[24] It was the Committee's conclusion that Mr JK, in drawing the complaints described in [23] to the attention of the Committee under the heading of "new complaint", was suggesting that the extensive range of complaints listed in [21]-[22] had not been previously addressed by Standards Committees.

[25] In what can only be described as a conscientious attempt to address all of the complaints raised by Mr JK, the Committee broke the complaints down into 18 individual complaints, and considered in respect to each and every one of those complaints whether matters raised had been addressed in previous decisions.

[26] On completion of that examination, the Committee concluded that it was satisfied that there was nothing new in the complaints. The Committee also noted that the conduct in question appears to have occurred at the latest in 2009, and in most cases

in 2006. In the view of the Standards Committee, even had the complaint raised new matters, further action would not have been desirable, given the passage of time.⁴

[27] The Committee considered that a significant number of the complaints raised by Mr JK should be more appropriately dealt with in fora other than the Lawyers Complaints Service.⁵

[28] The Committee signalled to Mr JK, as had previous Committees, that it was time for him to bring closure to the matters.

Application for Review

[29] Mr JK made application to review the Standards Committee decision on 28 August 2013.

[30] The way in which that application was framed, and the manner in which Mr JK has approached the review process, has not assisted with progressing this matter to an expeditious resolution.

[31] Mr JK notes in his application that he is giving notice that he intends to appeal [review] the Standards Committee decision.

[32] He indicates that he is awaiting more documents that will “prove” his appeal. He suggests that when those documents become available, he will be in a position to provide the Legal Complaints Review Officer (LCRO) with a detailed application. He makes complaint that the [North Island] Standards Committee was provided with official information requests, and he had expectations that the Standards Committee would action those requests and obtain the information that Mr JK sought from various agencies.

[33] It is not appropriate for applicants seeking a review of a Standards Committee decision to file an application on a “holding basis” whilst giving indication that they will clarify those aspects of the Standards Committee decision which they seek to review, once they have had an opportunity to gather further information to support their case.

[34] To approach a review application in that fashion is to misunderstand the fundamental basis on which a review proceeds.

⁴ Lawyers and Conveyancers Act 2006, s 138(1)(a).

⁵ Section 138(1)(f).

[35] The function of a LCRO is to exercise the powers of review conferred on the Office by the Lawyers and Conveyancers Act 2006.⁶

[36] A review is not an appeal, nor is it the function of the LCRO to act in the role of a “first step” investigator. Nor is it appropriate for the Office to fulfil a role of information gatherer for an applicant, or to have its independence compromised by advancing enquiries to assist an applicant to establish their claim.

[37] Mr JK made request of the LCRO to issue an official information request to obtain information he considered necessary to advance his complaint.

[38] There is a world of difference between a Review Officer seeking information to assist with clarifying aspects of a particular dispute, to an Officer embarking on an exercise to assist an applicant secure information to enable the applicant to establish grounds for a review.

[39] For the most part, it can reasonably be expected that parties who pursue a complaint against a lawyer fully understand the nature of the complaint and are in possession of the requisite evidence required to support the complaint.

[40] This is not to ignore that both Standards Committees and the Office of the LCRO have the power to seek documents and relevant information if the need to do so arises in the course of their inquiry, but it would be expected in most cases that parties that seek to review a Standards Committee decision are able to identify at the time the application is filed, the elements of the decision that they disagree with, and any materials they seek to rely on in challenging the decision.

[41] It would be unusual in most cases for a party to file a review on the basis that they wish to simply seek to preserve their position, to allow them opportunity to embark on an exercise to secure further information to support their case.

[42] I do not advance that as a proposition which is set in stone. There may be cases where it is reasonable to allow time for a party to assemble further information, but this is not one of them.

[43] Mr JK lodged his first complaint with the complaints service in 2009. He has pursued a number of complaints. It is inconceivable that Mr JK would not have had, over a period of several years, sufficient time to assemble all relevant information.

⁶ Section 192(a).

[44] It is important that parties who are the subject of a review application are promptly informed as to the basis upon which the Standards Committee decision is being challenged.

[45] An unfortunate consequence of the failure by Mr JK to identify the grounds giving rise to the review application is that it has encouraged Mr JK to engage in a prolific exchange of correspondence with the Office of the LCRO.

[46] He has frequently copied into this Office correspondence forwarded to other individuals or agencies. Much of that correspondence is extremely critical of Mr OC.

[47] The LCRO was obliged to provide copies of this correspondence to Mr OC. Mr OC, after receiving copies of initial correspondence, advised that he did not wish to be provided with copies of further correspondence received from Mr JK. The task of receiving and responding to information drip fed in this fashion is taxing on the resources of the Office.

[48] Nor is it fair to Mr OC that the Office tasked with completing independent inquiry into the Standards Committee process should receive a proliferation of correspondence forwarded to third parties which is extremely critical of Mr OC. That is potentially contaminating of the review process.

[49] Three months after filing his application, Mr JK wrote to the Office of the LCRO advising that he had not properly filed his complaint, and indicating that he was waiting for the Commissioner of Police to supply him with documents. He made request that his application be placed on hold until he received statements from a QC, the Police, and the office of the Solicitor-General.

[50] In April 2014, Mr JK advised the LCRO that he was still awaiting receipt of documents. He indicated that his ability to obtain these documents was conditional on the cooperation of what he describes as a "corrupt police staff", and equally "corrupt crown law staff".⁷

[51] On 6 June 2014, the LCRO advised Mr JK that it was unacceptable for the process to be delayed whilst he sought to obtain various documents.

⁷ Email JK to LCRO (2 April 2014).

[52] Mr JK continued to forward to the LCRO copies of correspondence despatched to third parties. That correspondence, in similar vein to earlier correspondence, repeated serious allegations against Mr OC.

[53] On 24 June 2014 Mr JK wrote further to the LCRO advising that he had not filed his "complete application or complaint" and would not do so until he had received documents from the Commissioner of Police.

[54] On 26 June 2014, enquiry was made of Mr JK as to whether he would agree to the review being completed on the papers. Mr JK advised that he did not consent to the matter progressing in that fashion. He continued to advance argument that his complaint had not been completed.

[55] Mr JK was notified that the matter would be set down for hearing. His response in correspondence dated 2 July 2014, was to advise that "the Review Officer has nothing to review, so please do not waste my time and yours by setting any date as I have not filed my complaint yet".

[56] Mr JK's continued advancement of argument that he is assembling information to support his complaint, underpins his misconception as to the nature of the review process.

[57] He is not pursuing a first stage complaint against Mr OC. He is seeking to review the decision of the Standards Committee which elected not to uphold his complaint. That is a quite different process from that of pursuing a complaint at first step.

[58] The matter was set down for hearing.

[59] In correspondence to the LCRO on 23 December 2014, Mr JK advised that he would be endeavouring to finalise his complaint within the next week.

[60] Mr JK attached to that correspondence a report he had received from the Ombudsman's office dated 28 November 2014.

[61] In further submissions forwarded to the LCRO on 20 January 2015, Mr JK detailed a number of individuals and organisations he had put on notice concerning what Mr JK describes as Mr OC's offending. These parties had, Mr JK submitted, failed in their duty to report the offending to the Law Society. Mr JK urged the LCRO to take action against these parties.

[62] This request provides further insight into Mr JK's misunderstanding of the nature of the review process, and the extent of the jurisdiction of the LCRO.

Mr OC's Response to the Review Application

[63] Mr OC submits that:

- He places reliance on previous decisions of the Standards Committees.
- He relies on correspondence provided in response to earlier complaints.
- He alleges that he has been the subject of a prolonged campaign of harassment from Mr JK.
- He contends that Mr JK has expanded the scope of his complaint to include allegation of corruption and serious criminal conduct by the Commissioner of Police, the Deputy Commissioner of Police, the former Solicitor-General, the Deputy Solicitor-General, numerous senior police officers and other parties.
- Mr JK's campaign has impacted on his endeavours to conduct his legitimate prosecution duties.
- Mr JK's campaign of character assassination has extended to writing correspondence defamatory of Mr OC to a Judge presiding over a trial in which Mr OC was acting as prosecutor.
- Mr JK has endeavoured to undermine Mr OC in his role as a professional member of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.
- Consideration should be given to the stress and diversion that Mr OC has been subjected to in the course of carrying out his professional duties, as a consequence of Mr JK's campaign.
- The complaint is vexatious and not made in good faith.

Role of the LCRO on review

[64] The role of the LCRO on review is to reach his own view on the information before him. Where the review is of an exercise of a discretion, it is appropriate for the

LCRO to exercise particular caution before substituting his own judgement for that of the Standards Committee, without good reason.⁸

The Hearing

[65] An applicant only hearing took place on 22 January 2015. The hearing was conducted by teleconference.

Analysis

[66] Whilst Mr JK makes a number of criticisms of Mr OC's conduct, it is important that the focus of this review be on those matters that were the subject of consideration by the Standards Committee in its decision of 25 July 2013.

[67] I agree with the Standards Committee, that it is inappropriate for the Committee to consider complaints that have been addressed by previous Committees.

[68] It is so obvious as to approach the trite to emphasise that it is an abuse of process for a complainant to respond to an unfavourable outcome by simply proceeding to file further complaints.

[69] Nor is it appropriate for a disgruntled complainant to endeavour to avoid an obstacle to filing further complaint by reframing the complaint in such a way as to attempt to avoid allegation that they are continuing to push the same barrow.

[70] In light of the fact that the Standards Committee has considered three previous complaints prior to the complaints that are the subject of this review application, all of which arise from the same factual matrix, it is important that this review process carefully consider whether Mr JK is simply continuing to push the same barrow, albeit with the load slightly rearranged.

[71] Whilst Mr JK makes a number of criticisms of Mr OC's conduct, four main themes can be distilled from the myriad of complaints. These are that:

- Mr OC misrepresented on no fewer than five occasions that he had disclosed documents to the Disciplinary Tribunal when he had not.
- Mr OC had misrepresented that documents were in his possession.

⁸ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [40]-[41].

- Mr OC had advanced argument to the Disciplinary Tribunal that an internal enquiry had been completed by the Police, when that was not the case.
- Mr OC had misled the Tribunal in respect of evidence regarding the cell phone records.

[72] Each of these allegations has been addressed by previous Standards Committees, and the [North Island] Standards Committee [X]'s decision of 25 July 2010, succinctly summarises where those complaints have been previously considered, and the outcome of inquiry into those complaints.

[73] In respect of allegation that Mr OC has misrepresented that he had disclosed documents to the Disciplinary Tribunal, the Committee noted that:

- Decision 3282 specifically addressed complaint of false disclosure and affirmed the view of the Solicitor-General that there was no evidence suggesting Mr OC had done anything wrong or misleading.
- The Committee in decision 7061 expressed a similar view.
- In decision 805/09, the Committee noted that a police investigation had concluded that there was no evidence to support Mr JK's allegations.

[74] Complaint that Mr OC had incorrectly advised the Tribunal that an internal police enquiry had been completed before the matter was advanced to the Disciplinary Tribunal was addressed in decision 3282.

[75] Complaint that Mr OC had provided misleading information to the Court in respect to cell phone records was addressed in decision 7061.

[76] There is a degree of understandable overlap in the way in which the Committee has summarised the various complaints, but careful examination of the most recent Committee's decision, leads to inevitable conclusion that the matters that Mr JK seeks to have this Office review have been the subject of a number of previous Standards Committee decisions.

[77] In light of the extensive history of essentially repetitive complaint, it is difficult to escape conclusion that Mr JK is unable to accept any findings, if those findings are at odds with his views.

[78] A commitment to pursuing redress against a perceived injustice engages admirable qualities of fortitude and persistence, but an inability to accept outcome in the face of comprehensive enquiry, can present as obdurate.

[79] I have indicated that I do not consider there is need to address the specifics of Mr JK's complaints, as I am satisfied that those complaints have been comprehensively addressed in previous Standards Committee decisions. Mr JK has not sought to review the most recent Committee's decision, but rather has advanced his case on the basis that the LCRO should be conducting a first step inquiry and, in essence, assisting him to secure information from a variety of sources which will, he believes, assist him to establish his case.

[80] The failure of these individuals and agencies to provide the responses that Mr JK has sought has regrettably encouraged Mr JK to taint these individuals with the whiff of the corruption allegations he levels at Mr OC.

[81] I will however touch briefly on the issue which permeates and underpins a significant component of Mr JK's complaints, being allegation that Mr OC misled the Disciplinary Tribunal by referring to documents that, Mr JK says, did not exist.

[82] Mr JK submits that a report he received from the offices of the Ombudsman dated 28 November 2014, provides compelling evidence to support his argument that Mr OC misled the Disciplinary Tribunal.

[83] I do not agree that the Ombudsman's report affirms Mr JK's position in the sense that he argues it does, but more importantly, Mr JK in advancing submission of this nature, is continuing to demand that Standards Committees, and now this Office on review, overreach their jurisdictions, and engage in analysis as to whether a disciplinary hearing, under the charge of an experienced QC, was progressed in a procedurally unsound manner. This argument is advanced within the context of those disciplinary proceedings being aborted, and not proceeding to conclusion.

[84] If Mr JK's argument that Mr OC had made misleading statements in his opening submissions was accepted, Mr JK's opportunity to challenge those submissions was at the Tribunal hearing, where Mr OC would have been accorded an opportunity to exercise a right of reply.

[85] If Mr OC advanced submissions which were, during the course of the hearing, held by the Tribunal chair to be inaccurate or misleading, Mr OC would have been accorded opportunity to proffer explanation as to why those submissions were

advanced, and the Tribunal given an opportunity to consider and determine whether the error, if established, was a consequence of Mr OC being incorrectly briefed, or him proceeding those submissions on the basis of genuine misunderstanding as to the relevant regulations which covered the disclosure process. If the Tribunal concluded that the submissions advanced were misleading of the Tribunal, and responsibility for that error rested with Mr OC, opportunity would follow for a conduct complaint to be pursued.

[86] Mr OC submits that his opening submissions to the Tribunal were in accordance with his instructions from the Police, and consistent with the Police's obligations to fulfil disclosure requirements under the Police Regulations.

[87] He has consistently rejected allegation that he misled the Disciplinary Tribunal. In that position he is supported by a number of Standards Committee decisions, and other agencies who have made enquiry into Mr JK's complaints.

[88] Mr JK takes a different view, and he is entitled to that view, but it is inappropriate to endeavour to resolve argument over the scope and extent of disclosure obligations for a Disciplinary Tribunal hearing, through the forum of the legal complaints process.

[89] If Mr JK considered that Mr OC had misled the Tribunal, that allegation should at first instance have been put squarely to the Chair of the Tribunal.

[90] Allegation that a decision making body had failed in its duty to conduct its proceedings in a fair, even handed and procedurally correct manner can be pursued through the process of an administrative review.

[91] That is not to suggest that counsel conducting litigation are not subject to disciplinary sanction if they breach their professional duties in the course of conducting that litigation.

[92] The rules of professional conduct place great emphasis on a lawyer's duty to the Court. Chapter 13 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules), detail in comprehensive form, a lawyer's duties to the Court. Fundamental, is a lawyer's absolute duty of honesty to the Court. A lawyer must not mislead or deceive the court.⁹

⁹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2009, r 13.1.

[93] But it is not the role of the LCRO to impose itself in the role of the decision maker at first instance.

Conclusion

[94] The [North Island] Standards Committee [X] addressed Mr JK's most recent complaints in a meticulous, careful and comprehensive fashion. The Committee was particularly attentive to ensuring that every aspect of Mr JK's extensive raft of complaints was given careful consideration and in particular, that the most recent complaints were measured against the history of previous complaints to ensure that any new matters raised were properly addressed.

[95] Mr JK filed his review application on the basis of submission that he would clarify the nature of his objections to the Committee's decision, when he had assembled relevant information.

[96] Eighteen months after filing his application, Mr JK had not clarified the aspects of the Committee's decision that he sought to challenge, other than to adopt a broad brush approach to repeating and amplifying complaints that have been previously considered by various Committees.

[97] No new information has been put before this Office which would support conclusion that the Standards Committee erred in deciding to make no further inquiry into the complaints.

Costs

The Act

[98] Section 210(1) of the Lawyers and Conveyancers Act 2006 (the Act) provides that:

The Legal Complaints Review Officer may, after conducting a review under this Act, make such order as to the payment of costs and expenses as the Legal Complaints Review Officer thinks fit.

The Guidelines

[99] The discretion in s 210 is exercised with reference to the Legal Complaints Review Office Costs Orders Guidelines (the Guidelines) which indicate the general approach that the LCRO is likely to take when considering costs orders after a review has been conducted.

[100] The relevant general considerations in making a costs order are:

- (a) Whether the making of the complaint is justified (even if no finding of unsatisfactory conduct is ultimately made).
- (b) The conduct of the parties in respect of the inquiry and/or review.

[101] The Guidelines provide for costs orders to be made against a practitioner, in favour of a practitioner to be paid by New Zealand Law Society (NZLS) and between the parties. There is no clear provision or guideline amount specifically relating to costs orders being made against a complainant in favour of NZLS, although such an order is not precluded.

[102] The Guidelines that apply to costs orders made between the parties make reference to the general power in s 210(1) of the Act as to costs and expenses, including that the power will be exercised sparingly, and:

- (a) Where the application for review was reasonable... and the parties have acted appropriately, parties will generally be expected to bear the costs they incurred in being a party to the review.
- (b) A costs order may be made against a party to review (whether a practitioner or a lay person) in favour of the other party where there has been some improper conduct in the course of the review. Such conduct may exist where a party has acted vexatiously, frivolously, improperly, or unreasonably in bringing, continuing, or defending the review.
- (c) Such an order will take into account the actual costs incurred by the other party in the conduct of the review including any counsel retained and any out-of-pocket expenses.

Relevant Authorities

[103] In LCRO 317/2012 the LCRO noted:¹⁰

[6] ...the discretion [in section 210] is clearly wide enough to make inter-parties costs orders, although this Office has been cautious about making costs awards against lay review applicants. This may happen where some aspect of the conduct of the lay applicant justified such an Order where this has resulted in cost incurred by the other party. An example of inter-parties costs having been made against a lay applicant occurred when a lay applicant specifically sought a hearing but then failed to appear, with the result that the practitioner's personal attendance was for

¹⁰ *AP v Standards Committee*, LCRO 317/2012, 25 November 2013.

no useful purpose. It would be extremely rare for costs to be awarded against a lay applicant merely for lodging the application for review, given that this is a right provided by the Act... which intends to enhance the rights of consumers to complain about the conduct of lawyers.

[7] The Guidelines set out the circumstances where costs Orders would be considered, and there it is stated that a lawyer applicant who is unsuccessful in his or her review application could expect to contribute to the costs of the review. The levels of contribution are also included, with the rider that costs may be increased where a party has acted vexatiously, frivolously, improperly, or unreasonably bringing, continuing, or defending the review. Where the conduct of a party falls into one or more of the above categories during the course of the review, then the exposure of that party to an award of costs increases.

[104] The LCRO then considered whether an award of costs in that case should exceed the range set out in the Guidelines saying:¹¹

Such may be the case where grounds of review are shown to be vexatious. The key ingredient for a matter to be considered vexatious is that it has no realistic prospect of success, such as allegations instituted without sufficient ground and serving only to cause annoyance...

[105] Mr OC argues that the time has approached for finding to be made that Mr JK's conduct in continuing to pursue his complaints has reached the vexatious.

[106] In correspondence forwarded to Mr JK on 12 November 2013, a Review Officer (not myself) who had completed a preliminary assessment of Mr JK's application made request of Mr JK to provide clarification as to which aspects of the Standards Committee decision he disagreed with.

[107] This request was made within the context of the Review Officer noting that the Standards Committee had observed that similar complaints had been dealt with in previous decisions.

[108] No response to that enquiry was received from Mr JK, other than for Mr JK to continue to advance argument that a complete application had not been filed.

[109] In further correspondence dated 9 June 2014, the LCRO advised Mr JK that his continued lack of response to request to provide explanation as to whether he considered the Standards Committee had erred could well be approaching the vexatious. Mr JK was advised that the LCRO may consider imposing a costs order, if the matter progressed to a hearing without Mr JK clarifying the nature of his complaint.

¹¹ At [19].

[110] Mr JK was given an opportunity at the hearing to provide response to indication that a costs order was being considered.

[111] It is important not to ignore the burden that these complaints have imposed on Mr OC, who has been the subject of repetitive complaint over a number of years.

[112] Whilst the scope of this review is confined to matters addressed by the Standards Committee, Mr JK's decision to copy into this Office correspondence addressed to a wide variety of individuals and organisation does provide insight into the extent of the criticisms Mr OC has had to face over a number of years.

[113] Without commenting in detail on those criticisms, suffice to say that Mr OC has been subjected to a level of criticism which goes to the heart of a lawyer's integrity and reputation. The allegations made are framed in the language of corruption. He is accused of wilfully perverting the course of justice.

[114] Mr JK has cast the net of allegation widely.

[115] Mr OC, as a senior and experienced counsel is well equipped to endure the slings and arrows of a degree of outrageous fortune, but experience and seniority do not provide an impervious shield to attack on personal reputation.

[116] I consider this is one of those rare cases where it is appropriate to make an award of costs against a lay complainant and that those costs be by way of direction that Mr JK make contribution to the costs incurred on this review. In reaching that conclusion I place particular reliance on the following:

- Mr JK filed an application which failed to clarify the basis of his opposition to the Standards Committee decision, and was unable over a lengthy period of time to do so.
- Mr JK has lodged complaints with the Complaints Service on four occasions. The complaints are, in significant part, repetitive.
- The length of time over which these complaints have been pursued, and the consequences for Mr OC of having to labour under the burden of persistent complaint.
- The additional costs incurred on this review as a consequence of Mr JK forwarding unnecessary correspondence to the LCRO.

- The desirability of bringing closure to these proceedings.

[117] I consider it appropriate for Mr JK to pay \$500.00 towards the costs of this review.

Decision / Orders

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

Mr JK is to pay to the New Zealand Law Society the sum of \$500.00, that payment to be made on or before 13 March 2015.

DATED this 10th day of February 2015

R Maidment
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:

JK as the Applicant
OC as the Respondent
BH as a related person pursuant to s 213
The [North Island] Standards Committee [X]
The New Zealand Law Society