

LCRO 272/2011

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of Waikato Bay of Plenty Standards Committee 2

**BETWEEN**

**SL**  
Applicant

**AND**

**MM**  
Respondent

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

**Introduction**

[1] This application for review follows an extraordinary series of events which led to the Standards Committee reaching a determination to take no further action in respect of a complaint by SL on the grounds that the complainant was unable to provide sufficient evidence to support her complaint.

**The Standards Committee investigation**

[2] SL lodged her complaint about MM with the Waikato Bay of Plenty District Law Society on 24 January 2007. Her primary complaint was that MM had failed to follow her instructions to write to the manager of the Waikato and District Hospitals following receipt of a notice terminating her employment. She wanted the manager to be made aware of the facts of her case which she considered had been misrepresented by the employee relations consultant of the DHB with whom she had engaged concerning the difficulties with her employment.

[3] MM responded to the Law Society somewhat obtusely in the following way:

Thank you for your letter of 26 January 2007. This matter concerned an employment dispute and [SL] decided to seek a second opinion and pursued her claim with another lawyer.

I have not had the benefit of refreshing my memory in respect of this matter as the file was forwarded to [CBQ], Lawyers.

I do however remember that [SL] often communicated with the other party directly and that at times my recollection of events were different to hers.

If somehow there was a delay which I am unable to verify, then I offer my sincere apologies.

[4] The Complaints Officer for the District Law Society forwarded this letter to SL with the following letter:

Further to previous correspondence, I enclose a copy of a response from [MM].

Without access to your file that was apparently forwarded to [CBQ], he is not able adequately to reply with any more detail.

If you wish me to press him for a more detailed explanation, I suggest you make your full file available from your new solicitors so that he can refresh his memory accordingly.

[5] There then followed an extraordinary sequence of correspondence between SL, the District Law Society, CBQ (the solicitors acting for SL at that time), CBR (the firm in which MM had been a partner when he was acting for SL) and MM.

[6] SL advised that she had instructed CBQ to make the relevant information available to MM. MM advised that he had received nothing. The Law Society wrote again to SL advising that MM had received nothing from CBQ.

[7] SL responded by advising that she had provided CBQ with the necessary authority and that she believed MM was stalling. The Law Society communicated again with MM who again responded that he had received nothing.

[8] The Law Society advised SL of this and reiterated that the Law Society could do nothing until MM responded. Again, SL replied that she believed MM was stalling.

[9] On 6 August 2007 MM wrote directly to CBQ and CBR enclosing a letter that SL had provided to the Law Society which MM considered to be an authority from SL to uplift the necessary files. CBQ responded by advising that his file had become merged with their own and that it would take some time to separate the files. CBR responded by advising that no authority to uplift was enclosed. This was treated by MM as a rejection of the form of authority. He forwarded these responses to the Law Society and took no further action. The Law Society then advised SL of these responses and recommended to her that she deal directly with the two firms

[10] Nothing further occurred until 11 April 2008 when the Law Society wrote to SL noting that the Society had not heard from SL since the Society's letter of 15 August 2007 and that the file would be closed if nothing was heard in the near future.

[11] SL responded by email advising that she had provided the appropriate authority. However, after further correspondence she provided another authority to the Law Society addressed to CBQ. The Law Society responded by advising that she should deal directly with CBQ.

[12] Nothing further happened again until 25 August 2008 when SL enquired as to what progress had been made. The Law Society responded by saying that nothing further had been received from MM. The Society in the same letter, placed the responsibility on to SL to pursue the matter to ensure that MM's files were returned to him. The Complaints Officer was somewhat short in his correspondence with her and with his advice as to what she needed to do to achieve this.

[13] It would seem that no consideration was given as to how the Law Society could short circuit the process by communicating directly with the law firms. Whilst the situation may have been somewhat unusual, it seems to me that the Law Society did have power pursuant to section 101(3)(c) of the Law Practitioners Act 1982 to undertake direct enquiries to resolve the impasse that had developed.

[14] Correspondence in a similar vein between the various parties continued through to September 2011. No further progress was made and no substantive response was received from MM.

[15] The matter was then referred to a Standards Committee constituted under the Lawyers and Conveyancers Act 2006, which had come into force on 1 August 2008. In a determination dated 21 October 2011, the Standards Committee determined pursuant to section 138(2) of the Act to take no further action in respect of the complaint. At paragraph 4 of its determination the Standards Committee stated:

The staff of the Lawyers Complaints Service have done all in their power to assist the Complainant to reach some finality in this matter, to no avail. The Complainant was unable to provide sufficient evidence to support the complaint.

### **Procedural issues**

[16] As noted above, the Lawyers and Conveyancers Act 2006 came into force on 1 August 2008. That Act repealed the Law Practitioners Act 1982 and contained transitional provisions with regard to complaints in hand as at 1 August 2008.

[17] The following sections of the Lawyers and Conveyancers Act are relevant to this situation: -

**353 Continuation of disciplinary proceedings and certain other proceedings**

- (1) This section applies to the following proceedings:
- (a) all proceedings in relation to all investigations, inquiries, applications, appeals, and other proceedings of a disciplinary nature under the Law Practitioners Act 1982 which have been commenced before the commencement of this section and which have not been determined or completed before the commencement of this section:

...

- (2) The proceedings to which this section applies are, subject to sections 354 to 361 of this Act, to be continued and completed as if the Law Practitioners Act 1982 had not been repealed.

...

**356 Exercise by Lawyers Standards Committee of role of complaints committee**

If any proceedings to which section 353 of this Act applies have not been determined by the close of the period of 6 months beginning with the date of the commencement of this section, the New Zealand Law Society must, despite the repeals effected by this Act, appoint a Lawyers Standards Committee (not being a Lawyers Standards Committee that has under section 357 of this Act the powers of a District Disciplinary Tribunal in relation to those proceedings) to carry out the duties and exercise the powers that a complaints committee appointed pursuant to section 100 of the Law Practitioners Act 1982 would have had, under that Act, in relation to those proceedings if that Act had not been repealed and the relevant complaint or matter had been referred to it.

[18] Consequently, a Standards Committee should have been appointed pursuant to section 356 of the Act to consider this complaint, and that Committee should have dealt with the complaint as if the Law Practitioners Act had not been repealed. This means that there can be no determination to take no further action pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006.

[19] The Law Society does not seem to have formally appointed Standards Committee 2 as a Committee pursuant to section 356 of the Act. In addition, the determination required in terms of the Law Practitioners Act, would take the form of a resolution that the Committee did not consider the complaint to be of sufficient gravity to warrant the laying of charges before another Standards Committee constituted for this purpose pursuant to section 357 of the Act, or the Lawyers and Conveyancers Disciplinary Tribunal. Instead, the Committee determined pursuant to section 138(2) of the Lawyers and Conveyancers Act to take no further action.

**Can the procedural defects be corrected by the LCRO?**

[20] Section 356 of the Act requires the New Zealand Law Society to appoint a Standards Committee to carry out the duties and exercise the powers that a Complaints Committee appointed pursuant to section 100 of the Law Practitioners Act 1982 would have had under that Act. I can find no evidence on the Standards Committee file that this action has been taken. If I am incorrect in that respect, then the Complaints Service may return the matter to me to be dealt with in the normal way.

[21] If however I am correct in my understanding, I have no authority to rectify the omission and accordingly the determination of the Standards Committee must be reversed and the matter returned to the Complaints Service to be dealt with in accordance with the Act. This is unfortunate given the extraordinary length of time that has elapsed from the time of the complaint. It is unfortunate also that the procedural issue was not noted by me until reviewing this file in detail following the review hearing with SL. However, there is no ability for these errors to be corrected by me to enable the matter to be concluded.

**Further evidence**

[22] In progressing this file, this Office communicated with both CBQ and CBR and obtained MM's files directly from those firms. As a result, a substantive response was received from MM. That response and MM's files will be made available to the Complaints Service to enable the matter to be dealt with promptly. In addition, correspondence from the parties identified in the schedule to this decision will also be made available to the Complaints Service.

**Decision**

[23] Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee is reversed.

**Commentary**

[24] The New Zealand Law Society will be required to constitute a Standards Committee pursuant to section 356 of the Lawyers and Conveyancers Act to consider this complaint and make a determination pursuant to section 353 of the Act. As noted above, if I am incorrect in my conclusion that the Standards Committee has not been properly constituted, the New Zealand Law Society Complaints Service may return the file to me with the appropriate evidence that the Committee has been properly constituted and this decision will be withdrawn and the review completed. I also

request that the Complaints Service give priority to completing this matter with urgency given the extraordinary sequence of events that have unfolded in the progress of this complaint.

**DATED** this 2<sup>nd</sup> day of November 2012

---

O W J Vaughan  
**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:

SL as the Applicant  
MM as the Respondent  
Waikato Bay of Plenty Standards Committee 2  
The New Zealand Law Society

#### **Schedule**

- Letter from CBS to the Legal Complaints Review Officer (and enclosures) – 27 April 2012

- Email correspondence from SL to KW (LCRO case manager) – 9 May 2012
- Letter from the LCRO to MM – 29 May 2012
- Letter from CBS to the LCRO (plus enclosure) – 20 July 2012