

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the Otago Standards Committee

**BETWEEN**

**MR JT**  
Applicant

**AND**

**MR QI**  
Respondent

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

**DECISION**

**Background**

[1] The Standards Committee declined to uphold a complaint made by Mr JT (the Applicant) against Mr QI (the Practitioner). The complaint concerned conduct that had occurred in 1992 and 1993, the Applicant alleging that the Respondent had failed to serve copies of matrimonial property proceedings in the Family Court on him. This concerned a proceeding between the Applicant's brother and the brother's wife. The Practitioner acted for the wife.

[2] The Standards Committee identified a number of documents that the Applicant had placed before the Committee, and had also reviewed the Practitioner's response to the complaint. The Practitioner had advised the Committee that the matter was heard some 18 years ago and he no longer had the file, adding that the Applicant had raised at least two complaints against him in respect of the same matter in the 1990's, which were reviewed by a Lay Observer. The Practitioner's recollection was that the complaints were dismissed.

[3] The Committee referred to section 351(2)(b) of the Lawyers and Conveyancers Act 2006 which prohibits a complaint being made in respect of conduct that occurred more than 6 years earlier. The Committee noted that the conduct in question occurred some 15 years before the commencement of the Act and concluded that any further action was unnecessary or inappropriate.

[4] The Applicant exercised his right to seek a review. A review hearing was held with the Applicant alone on 24 August 2012.

[5] In support of his review, the Applicant wrote that the Law Society had used the Law Practitioner's Act and the Lawyers and Conveyancers Act 2006 to protect an incompetent lawyer, instead of examining the facts of the complaint. He noted that there had been a High Court ruling that he was to be served with the proceeding in the Family Court. The outcome he sought was that the Law Society should be ordered to examine the facts properly.

[6] At the review hearing the Applicant outlined the events that had occurred in 1993 relating to the failure of certain documents being served on him. He also explained that the Practitioner had had him removed as a party to the proceeding (the Applicant described this as being disbarred). The Applicant provided copies of part of the court proceedings which were on the Standards Committee file.

[7] He also informed me that he will be appearing in the High Court on Monday (three days after the review hearing) at which time many of these matters would be aired, he said. He invited me to refer to the various Court proceedings and provided me with references to do so. I did not take up the opportunity, being of the view that it was unnecessary to do so for the purposes of this review.

### **Considerations**

[8] It is my task to consider whether the Standards Committee was correct in its decision. I have considered all of the Applicant's submissions, which included his views on the law and legal ethics. He provided examples of High Court judges having amended decisions that they later acknowledged were wrong. These submissions were made, as I understood the matter, to demonstrate that there could be no objection to the Standards Committee correcting its earlier errors (presumably with reference to the Complaints Committee decisions in the 1990's), nor any objection to my ordering the Committee to do so.

[9] The powers and jurisdiction of Standards Committees, and the Legal Complaints Review Officer, are defined by statute. The relevant statute is the Lawyers and Conveyancers Act 2006. There can be no doubt whatsoever that the transitional provisions of section 351 apply in this case, as it concerns conduct that occurred prior to the commencement of this Act.

[10] Section 351 prevents a complaint being considered where the conduct complained of occurred more than six years ago. An identical prohibition exists in respects of complaints that have been disposed of under the Law Practitioner's Act 1982.

[11] Section 351(3) defines a complaint as having been "disposed of" if a District Law Society decided that the Society would take no further action on it and the Complainant, did not, within three months of being notified of that decision, refer the decision to a Lay Observer, or if a Lay Observer, after examining a written allegation made by the Complainant about the District Law Society's treatment of the complaint, had not indicated in the Lay Observers report that further steps or enquiries would be made.

[12] The Applicant agreed that he had raised these complaints about the Practitioner in the 1990, that they had been declined, and in respect of which a Lay Observer had made no recommendations.

[13] The Applicant is not deterred by the s 351 statutory barrier. He has a very clear idea about how the law should operate, and in particular how ethics should prevail over law or legal process. He feels that he has not yet had redress in respect of a wrong done to him by the Practitioner in 1993. The complaint was that the Practitioner had failed to ensure that the Applicant was served with documents as directed by a court, which had decided (in March 1993) that the Applicant had an interest in the proceeding (involving the Applicant's brother and wife) and should be allowed the opportunity of filing an affidavit. The Applicant also provided a copy of the Court hearing which took place the following month (April 1993), which showed that the Court was well aware that the Applicant had not been served as directed, and this was subsequently remedied in a Minute issued in June 1993 which provided him with a further opportunity to do so.

[14] I have considered the complaint and all of the submissions that the Applicant made at the review hearing. His main argument rests on the possibility of earlier error being corrected which, he argued, includes an error made by judges in their decisions.

I noted that the failure of service was explained by the Court as an administrative error. I do not have the earlier files of the Complaints Committee, but given the Applicant's admission that the same complaint has been previously considered, it was unnecessary to obtain those files.

[15] The Standards Committee did not consider the substantive complaint, having determined the matter on the basis of an absence of jurisdiction under section 351.

[16] The Lawyers and Conveyancers Act is clear about what conduct-related complaints cannot be considered by a Standards Committee. Although the Applicant has made submissions contending that judicial errors can be amended, and sharing with me his philosophies about the law and legal process, I have not discerned any basis for reconsidering a complaint about conduct that occurred more than six years ago, and in the circumstances the complaint has been dealt with.

[17] I am therefore obliged to conclude that the Standards Committee was correct to have declined jurisdiction in this case and to take no further action.

### **Decision**

Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006, the Standards Committee decision is confirmed.

**DATED** this 7<sup>th</sup> day of September 2012

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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:

JT as the Applicant  
QI as the Respondent  
The Otago Standards Committee  
The New Zealand Law Society  
The Secretary for Justice