

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee

BETWEEN

AA

Applicant

AND

BB, CC and DD

Respondents

DECISION

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

Introduction

[1] Mr AA has applied for a review of the determination by [Area] Standards Committee to take no further action in respect of his complaints against the respondents who are all solicitors in the Crown Solicitor's Office in [City A] ([Law Firm A]).

Background

[2] Mr AA was convicted and sentenced to a term of imprisonment in the District Court. He appealed to the High Court. [Law Firm A] were instructed to appear for the Crown. The defended fixture in the District Court had been prosecuted by [City A] Police Prosecutions.

[3] Ms DD appeared for the police on the appeal. She relied on the evidence and the findings of the District Court Judge and made submissions in support of the conviction and sentence.

[4] [District Court Judge A] dismissed the appeal against conviction but reduced the term of imprisonment from two and a half years to 15 months.

[5] Mr AA sought leave to appeal to the Court of Appeal. Ms BB appeared for the police at that hearing. Leave to appeal was declined.

[6] Mr CC advises he:¹

... had no involvement at all in the case other than to have an incidental supervisory role of his prosecutors. Ms DD and Mrs BB were engaged for the purposes of legal argument; firstly to consider whether the District Court judge had sufficient evidence to find Mr AA guilty and then whether there were legal grounds on which the matter could be appealed to the Court of Appeal. Ms DD did no more than refer [to] the evidence put before the District Court (which it had found credible and reliable), and Mrs BB make submissions on whether or not there was a matter of law that justified the leave to appeal being granted.

Mr AA's complaints

[7] In his complaint, Mr AA wrote:²

This is manifest misconduct in litigation whereby prosecuting counsel have breached the duty of the Court by being party to abuse of process and engaged in deliberate acts of omission actuated by malice, corrupt or improper motives and have continued to pursue a hopeless case. Misfeasance in Public Office The Tort consisting of Public Officers causing damage to a plaintiff by either deliberate act knowingly in excess of official Powers where such Officers knew or ought reasonably have foreseen that deliberate conduct would cause damage to the Plaintiff is a justiciable [sic] matter. Submitting evidence knowing to be false to the Court Case – CRI 2012-00008748 Victim and Witness Testimonys [sic].

[8] In Part 4 of the form (attempts to resolve complaint) Mr AA wrote:

I wrote my first complaint about this case to the Law Society against Mr CC they ignored this then [Sergeant A] they ignored this then DD they ignored this and now BB. The evidence in the 111 phone call from FF the Police 1st received proves evidence brought against GG and AA Testimony's are outright lies.

The Standards Committee determination

[9] The Standards Committee noted: "Mr AA does not particularise the part played by Ms BB, Mr CC and Ms DD in the allegations he makes".³

¹ Letter CC to LCRO (30 September 2013) at [5].

² AA complaint (2 August 2013) at [3].

³ Standards Committee determination (13 August 2013) at [4].

[10] It continued:⁴

This is the second complaint that Mr AA has made about the prosecution of his District Court trial. The decision in this complaint is substantially the same as the earlier decision (7709). It is hoped that Mr AA will appreciate, from this decision, that allegations which are court related, cannot be advanced through the complaints process. The proper forum for Mr AA to challenge the actions of the lawyers and the evidence presented is on appeal. Also, if Mr AA wishes to pursue the charge of "misfeasance in public office", that is a matter for which the correct forum is the courts.

[11] The Committee then observed that evidence and findings of fact are matters for the Court and that the "complaints process cannot be used to review matters which have been determined through the courts".⁵

[12] It determined to take no further action on Mr AA's complaints.

The application for review

[13] The supporting reasons provided by Mr AA for the review application are:⁶

The 111 call made by FF was given in evident [sic] as a recording and after FF and HH gave their evidence at the original trial The transcript was not provided to the defendants. The 111 call is evident : no shovel went through the window That FF did not take the shovel off GG That FF did not see AA at the gate with a grubber That only one window was broken That no shovel just missed HH and FF The 4 caption statements submitted to the court by the prosecution the witness statement of HH is lies their [sic] was no moon for her to see these were all lies conflicting with FFs lies The prosecution has an obligation to show truth of pleadings The 111 call described by Honourable Justice [District Court Judge A] as legitimate and The best evidence shows the prosecution knew the testimony's of FF and HH was outright lies The injuries were fabricated and exaggerated beyond belief Their [sic] is no receipts for the repairs or evidents [sic] to support the claim towards the damage to the washing machine The 111 call makes a mockery of the evidence presented by the prosecution. Ruthlessly persecuted and imprisoned AA and GG refusing appeal applications.

[14] The outcomes sought by Mr AA are:⁷

That the named barristers solicitors be expelled and not readmitted under section 155(c) of the Lawyers and Conveyancers Act 2006 be removed from Public Office pursuant to proceedings under the judicature amendment Act 1972 and Rule 627 of the High Court Further that this information be presented to the Office of the Attorney General as guardian of the Public interest for the institution of appropriate proceedings against the aboved [sic] named.

⁴ At [5].

⁵ At [10].

⁶ Application for review (received 20 September 2013) at [7].

⁷ At [8].

Review

[15] This review has been progressed by Mr Vaughan, a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to clause 6 of schedule 3 of the Lawyers and Conveyancers Act 2006 (the Act). The LCRO has delegated to Mr Vaughan all of his functions and powers under the Act. He has also delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me.

[16] During the course of investigating this review, Mr Vaughan issued a minute on 2 May 2017 in which Mr AA was advised of the limitations of the review process and the likely outcome of the review. A copy of that minute is attached to this decision.

[17] Mr AA advised he wished the review to continue and he required a hearing.

[18] An applicant only hearing was scheduled to be heard by telephone to which Mr AA objected. He demanded a hearing in person.

[19] Section 206(5) of the Act provides that the LCRO may “regulate his or her procedure in such manner as he or she thinks fit”. Mr AA was advised the hearing would take place by telephone. Arrangements were made for Mr AA to have access to a land line at the Disputes Tribunal in [City A] for this purpose.

[20] In the days prior to the hearing Mr AA made requests for this Office to obtain transcripts of the High Court proceedings for him. The judgments of [District Court Judge A] are all that is required for the purposes of this review and the general principle followed by this Office is that no new evidence will be accepted on review. This Office does not follow directions from applicants and Mr Vaughan determined that the transcripts requested by Mr AA had no relevance to proceedings on review.

[21] The review hearing proceeded by telephone on 19 June 2017 in conjunction with the hearing relating to Mr AA’s application for review of the determination of his complaints about his counsel.

[22] Mr AA added nothing that was not already on the Standards Committee file and repeated on review. His comments related largely to his dispute as to the facts found by [District Court Judge B] in the District Court proceedings. The only submission that related directly to the respondents was that they had a duty to the Court to present the best evidence, which Mr AA says is a 111 call made by the victim of assault, Mr AA’s nephew, FF.

[23] The Court had the evidence related to the 111 call before it. Mr AA's issue with regard to the call is that he was not provided with an audible version or a transcript. This has absolutely no relevance to a complaint about the respondents.

[24] The respondents became involved with this matter when instructed to appear for the police on the appeal and the application for leave to appeal. They were not involved in the District Court proceedings where the evidence was presented and findings of fact made. At the appeal hearing, Ms DD relied on the facts as determined in the District Court. When Mr AA applied for leave to appeal from the High Court Ms BB made submissions on the law.

[25] Nothing has been provided by Mr AA that would cause me to come to a different view from those expressed by Mr Vaughan in the minute of 2 May 2017.

[26] Mr AA has pursued a review which is totally without merit.

Decision

[27] Pursuant to s 211(1)(a) of the Act the decision of the Standards Committee is confirmed.

Costs

[28] Mr AA was put on notice that if he continued to pursue this application for review he was exposed to an award of costs being made against him.⁸ I have observed above that this review application is without merit. In the circumstances it is appropriate that Mr AA should bear the costs incurred in conducting this review.

[29] Costs have been minimised by the directions of this Office (opposed by Mr AA) that the review be conducted by telephone. The Costs Orders Guidelines provided by this Office established the costs of a straightforward review in person as being \$1,200 and a hearing on the papers for a straightforward matter being \$900.

[30] This review is straightforward and costs have been reduced further by being dealt with at the direction of this Office in conjunction with Mr AA's other review application. In the circumstances, the appropriate costs order to apply is for a hearing on the papers.

[31] Pursuant to s 210(1) of the Act Mr AA is ordered to pay the sum of \$900 to the New Zealand Law Society by no later than [1 month].

⁸ Minute (2 May 2017) at [9].

[32] I have given thought as to whether or not to invite the parties to make submissions with regard to costs incurred by the respondents. The respondents have not themselves raised the issue and to invite submissions on costs will prolong this matter and add to the costs (and time) incurred by this Office in dealing with the matter. I have therefore determined not to request further submissions on this issue.

[33] The review is at an end.

DATED this 27th day of June 2017

D Thresher
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:

Mr AA as the Applicant
Ms BB, Mr CC and Ms DD as the Respondent
Mr EE as a Related Person
[Area] Standards Committee
The New Zealand Law Society