LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2020] NZLCRO 42

Ref: LCRO 34/2018

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 [X]
BETWEEN	**GR** Applicant
AND	**[AREA] STANDARDS COMMITTEE [X]** Respondent

DECISION

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

Introduction

[1] Mr GR has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) that found his conduct when attending to the registration of various easements to have been unsatisfactory. Following the adverse conduct finding, Mr GR was censured, fined and ordered to pay costs.

[2] The decision arose from a confidential report to the New Zealand Law Society (NZLS), that report provided reference to r 2.8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules). That report prompted the Committee to commence an own motion inquiry.[1]

[1] Section 130(c) of the Lawyers and Conveyancers Act 2006 (the Act) empowers a Standards Committee to conduct of its own motion an investigation of practitioner conduct that may have been misconduct or unsatisfactory.

Background

Context

[3] In October 2016, a couple were in the process of purchasing Lot 6 in a new residential subdivision at [Town A].

[4] Mr GR was acting for the developer/vendor. The couple had their own solicitors, and a legal executive employed by the firm in question was handling the transaction for them.

[5] On 12 October 2016, Mr GR advised those solicitors that title issue was imminent. That advice led to an examination by the legal executive of the Easement Instrument affecting Lot 6 that Mr GR had electronically signed off earlier that day.

[6] That electronic documentation incorporated a number of certifications by Mr GR including that he had authority to act for "the grantee" in authorising lodgement of the Easement Instrument (the First Instrument), one which he had lodged for pre-validation on 21 September 2016, and that he held evidence showing the truth of that authorisation together with other certifications that had been incorporated in the document..

[7] The First Instrument identified "the grantee" as including [Company A] New Zealand Ltd ([Company A]), the subject of this instrument concerning rights to convey telecommunications and computer media.

Authority to register?

[8] On 17 October 2016, the legal executive, counting it unusual for such an easement in gross (as this was described) to be bundled in with right of way and other easement rights reserved to the developer, wrote to Mr GR and requisitioned the title as was provided for in the sale and purchase agreement.

[9] In doing so, she posed these questions to Mr GR:

> *Did [Company A] consent to the preparation of their easement with the other service easement as you have registered it, and did they sign an Authority and Instruction Form accordingly.[2] Please confirm that [Company B] also signed and (sic) Authority & Instruction Form.*

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[2] All transactions lodged via e-dealing must be duly authorised. A signed Authority and Instruction form gives a lawyer or conveyancer authority and instruction to lodge a dealing for registration. These matters are now governed by the Land Transfer Act 2017 which came into force on 12 November 2018. At the time of the events in question here, the Land Transfer Act

[10] Mr GR responded later the same day but without answering either of the questions posed. Instead, this is what he materially said:

> *This was (sic) subdivision was approved by LINZ. I do not understand why you think a separate easement should have been registered for [Company A]. Why do you say that?*

[11] The legal executive, after making further inquiries, responded to Mr GR as follows:

> *We have contacted [Company A] who advise that no contact appears to have been made in respect of the signing of an Authority & Instruction Form for their easement…*
>
> *… we reiterate our requisition of the title and look forward to hearing from you in respect of the registration of a new easement in favour of [Company A] and an amendment of the existing easement registered (excluding [Company A]).*

[12] Mr GR responded the next day quoting advice from LINZ that the combination of an easement in gross (the categorisation of the [Company A] easement given it had no interest in the land) with a standard easement was acceptable, but if separation was required, a surrender followed by re-creation in a fresh instrument would be necessary.

[13] The legal executive relevantly replied:

> *… We assume you have the authority and instruction form signed by [Company A] as they would have been a party to the easement and you would not have been able to certify your dealing correctly had you not had the authority and instruction form signed by [Company A].*
>
> *A letter from [Company A] to the effect that they accept the easement instrument which you have prepared should be sufficient for us to advise our client. We are weary (sic) in case [Company A] decides in the future that easement as registered is not acceptable and then there will be a bigger task at hand having to surrender the easement and prepare new ones whilst having to involve far more parties and mortgagees.*

[14] Mr GR then responded:

> *… If LINZ says this is ok then I am going with that thanks. There is absolutely no problem at all in having different easements subject to the same generic terms and conditions: that is arguably the modern way of doing it. It is somewhat irrelevant if the easement is in gross or otherwise provided the person or party who gets the benefit of the easement instrument is correctly stated (in this case one of them is [Company A]).*
>
> *I don't need to send your client A and Is from anybody if LINZ is satisfied with the way this has been done. Consequently I won't be.*

1952 was still in force and the governing section (which had been inserted in 2002) was s 164A, reproduced in [49] of this decision.

[15] To which, at midday on 18 October 2016, the legal executive replied:

> *… We have just one question.*
>
> *Did you get an Authority and Instruction signed by [Company A]?*

[16] There being no response, a director of the purchasers' solicitors wrote to Mr GR at 1.47 pm that day:

> *… As advised we made inquiries with [Company A] re easement.*
>
> *[Company A] advised that they were not aware of the easement arrangements.*
>
> *We have some concerns regarding the division of responsibilities of [Company A]. Given [Company A]' response and our concerns we require evidence that [Company A] has consented to the easements in the terms as drafted.*

[17] That drew this response from Mr GR:

> *… I have evidence of correspondence between [Company A] and [EP] (the surveyor) about this so that's not right. Please do not correspond with [Company A] about something that does not concern you. I will sort this out as instructed by my client …*

[18] The director responded on 19 October 2016:

> *It is of concern to us that our client be satisfied that [Company A] has approved the terms of the easement.*
>
> *It will also be of concern to you as you have certified to Landonline that you have consent from [Company A] in terms of the easement.*
>
> *Our query is prompted by the fact that [Company A] usually has its own form of easement, which is available on their website, and by the fact that [Company A] has advised our office that it is not aware of the terms of the easement. The registration of an easement in Gross in favour of [Company A] should have been dealt with no differently to the [Company B] easement.*
>
> *We also note that the form of easement now registered could create some uncertainty as to the rights and obligations as between the registered proprietors of the dominant tenements and [Company A], for maintenance etc.*
>
> *There is no professional prohibition on our contacting [Company A] as to its practice in such cases. Accordingly we request that you satisfy us that you have received an Authority & Instruction Form from [Company A] in respect of the easement instrument which you have registered.*

[19] Mr GR then replied:

> *… I agree this must be done correctly. I am a bit annoyed that [Company A] did not bother to contact me about a specific easement instrument required from them, as [Company B] did. I assumed that a standard easement covering their position was all that was required. If that is not the case then so be it and it will have to be changed. However I have correspondence between [Company A] and [EP] about the easement (now – not before) so this is all fairly unfortunate. [Company A] knew what was happening.*

> *Anyway I have contacted [Company A] so hopefully this mess can be satisfactorily resolved fairly quickly.*

[20] As can be seen, at no point in this correspondence had Mr GR directly responded to, let alone met, the repeated requests of the purchasers' solicitors for evidence that prior to registering the multiple easement (or even thereafter) he had held or obtained from [Company A], duly executed, the requisite Authority & Instruction Form. In fact, as it turns out, that was only obtained on 27 October 2016.

Caveat lodged

[21] The purchasers were not entitled to start building on the lot before settlement, but it appears that their builder and the developer reached agreement for building to commence before that event. The purchasers' solicitors advised their clients to register a caveat to secure those improvements and that was done, Mr GR being advised accordingly.

[22] Mr GR protested on 1 November 2016 in terms suggestive of that now being an impediment to the regularising of the [Company A] easement.

[23] On 7 November 2016, and in response to advice from Mr GR that he was urgently seeking to rectify matters, the legal executive requested a copy of the First Instrument's surrender as regards [Company A], and the new [Company A] easement (the Second Instrument). To that request, Mr GR replied:

> … I will not be sending you anything – why would I? You will be able to see what's on the title when you search it in due time.

Caveat related consent issues

[24] On 10 November 2016 at 3.11 pm, the legal executive provided Mr GR with the purchasers' consent to the registration of the Second Instrument. That consent, before then only in the hands of the purchasers' solicitors, was dated 4 November 2016.

[25] A View Instrument Details print out from LINZ,[3] records that 3 days before that consent was provided to Mr GR, he had — on 7 November 2016 at 10.54 am — lodged the Second Instrument for pre-validation.[4]

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[3] Itself timed 4.10 pm on 10 November 2016.

[4] As to the current pre-validation process, see: Land Information New Zealand "Pre-validation for dealings and instruments" (12 November 2018) <https://www.linz.govt.nz/kb/302>. There has been no suggestion that the process was significantly different in 2016.

[26] At 4.05 pm on 10 November 2016, Mr GR certified to LINZ that the caveator under [Caveat XXXXXX.1] (being the purchasers' caveat) had consented to the transaction, which was subject to the caveat, and that he held that consent.

[27] Similarly, and at 4.06 pm that day, he certified, as grantee representative, his authority to act for the grantee and that he held evidence of the truth of the certifications given.

[28] While there can be no quarrel with the certification referred to in [27] above that Mr GR gave after he received the consent of the caveator, going back to 7 November 2016 and the pre-validation lodgement, the legal executive had said in her statement accompanying the confidential report:

> We can only speculate as to whether GR certified he had the caveator's consent on 7 November 2016 when he first lodged the dealing. My understanding is that is that he could not have lodged the dealing on 7 November unless he had ticked the box indicating he had caveator's consent before lodging it. He did not have caveator's consent at that time. I did not send it to him until 10 November 2017 (sic).
>
> Settlement of our clients' purchase took place on the 23 November 2016.

[29] As will appear later, Mr GR answers the concern that he provided false certification to LINZ on 7 November 2016, not by denying that he was required to and did provide certification on that occasion, but by seeking to rely on the date of the caveators' consent (4 November 2016), albeit that consent was not sent to him until 10 November 2016.

[30] With particular reference to s 12 of the Act and r 2.5 of the Rules, the Committee identified, and Mr GR was informed per medium of a Notice of Hearing,[5] that in the given circumstances:

> 1. The Committee's primary concern was whether Mr GR had made false certification(s) to Land Information New Zealand (**LINZ**) on 21 September 2016, 12 October 2016 and/or 7 November 2016; and
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> 2. if Mr GR had done so, on what grounds did Mr GR rely when making those certifications; and
>
> 3. if those certifications were false, was Mr GR wilful and/or reckless as to the truth of his certifications;[6] and that
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> 4. submissions should also address any matters of fact or law a party believes should be taken into account concerning:
>
> 5. the possibility that the Committee might make a determination that the matter, or any issues raised by the matter, be considered by the New

[5] See notice of hearing dated 17 August 2017.
[6] See s 7(1)(a)(ii) of the Act.

Zealand Lawyers and Conveyancers Disciplinary Tribunal (s 152(2)(a) of the Act);

6. the appropriate orders the Committee might make under s 156 of the Act, if there is a finding(s) of unsatisfactory conduct; and

7. the possibility of publication of the determination or a summary of the determination (facts, outcome and orders) if there was a finding(s) of unsatisfactory conduct; and

8. If the Committee wished to direct publication of the identity of the lawyer to whom the matter relates, the parties would be given a separate opportunity to make submissions on that issue.

The Standards Committee decision

[31] Having received submissions from Mr GR (see [34] below) responding to the issues raised in its Notice of Hearing, the Committee delivered its decision on 25 January 2018.

[32] The Committee held that:

(a) Mr GR's certifications to LINZ in relation to the First Instrument on 12 October 2016 were in breach of r 2.5 of the Rules and amounted to unsatisfactory conduct under s 12(c) of the Act; and that

(b) his (pre-validation) certifications to LINZ on 7 November 2016 in relation to the Second Instrument were also in breach of r 2.5 of the Rules and amounted to unsatisfactory conduct under s 12(c) of the Act.

[33] The Standards Committee ordered that Mr GR:

(a) be censured pursuant to s 156(1)(b) of the Act;

(b) pay fines of $3,000 each on account the two unsatisfactory conduct findings ($6,000 in all) to the New Zealand Law Society pursuant to s 156(1)(i) of the Act; and

(c) pay costs of $3,000 to the New Zealand Law Society pursuant to s 156(1)(n) of the Act; and it also

(d) directed the Complaints Service to provide a copy of its decision to the Registrar-General of Land pursuant to s 159 of the Act; and

(e) ordered that pursuant to s 142(2) of the Act an anonymised summary of the decision be published as the New Zealand Law Society deemed appropriate.

[34] Prior to so deciding, the Committee had before it submissions variously made by Mr GR including that:

(a) he believed on reasonable grounds that he could include the [Company B] and [Company A] easements in the same instrument and that all he needed was the [Company B] A & I which he had;[7]

(b) once he discovered that was not so he took immediate steps to rectify the situation;[8]

(c) no harm, damage or loss was incurred by anybody;

(d) he had made a genuine mistake based on information received from third parties (as he recalled he thought he had discussions about the matter with LINZ staff and, possibly, the surveyor);

(e) He did not wilfully mislead anyone.

Application for review

[35] Mr GR filed an application for review on 27 February 2018. The outcome principally sought is reversal of the Standards Committee determination.

[36] Mr GR provided his grounds for review the following day, on 28 February 2018. They are that:

(a) although a conveyancing practitioner for 18 years, this was his first multi-lot subdivision dealing with easements for electrical utilities;

(b) he did not know that different parts of those services separately involved [Company B] and [Company A];

(c) he thought he just needed to register an easement for [Company B];

(d) that was the "indication [he] he got from the surveyor's correspondence that did not mention [Company A]";

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[7] First email response to the Complaints Service (19 October 2017).

[8] Rules 2.5–2.6 of the Rules say:

> 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.
>
> 2.6 If a lawyer subsequently discovers that a certificate given by the lawyer was or has become inaccurate or incomplete to a material extent, the lawyer must immediately take reasonable steps to correct the certificate.

(e) "therefore, [he] assumed that the only easement was for [Company B] and [he] got authority to register only from [Company B];

(f) the [Company B] authority was dated 1 September 2016 and that was all he thought he needed at the time;

(g) that had been an innocent mistake born of inexperience in such matters;

(h) he had obtained a [Company A] A & I on 26 October 2016 which he now produced;

(i) he had to await an A & I from the [Local] District Council before he could withdraw the First Instrument for replacement with the Second Instrument;

(j) once he had all the authorities he proceeded to register the Second Instrument;

(k) he did not know the caveat was there until (he thought) 15 November 2016, the date of a title search;[9]

(l) he did not " … remember thinking about the certificate too much at the time as all [he] thought [he] was doing was certifying about the easement";

(m) "The caveat reference [might] have come up during the certification process [he really could not remember] but then [he] must have ticked it because [he] must have thought this was what was done in these circumstances (changing the easements) for some reason. [He] did not actually know [the purchasers' solicitors] had registered a caveat over the property at the time. [He] was focussing on correcting the easement so proper title could issue for a settlement … [He] simply was not expecting a caveat from them";

(n) "However, apart from that, [he thought] that it [was] fair to say that [he] did have the caveator's consent as they had a binding agreement on this section".

[9] As noted at [22] above, Mr GR had protested the caveat on 1 November 2016 in terms suggestive of that now being an impediment to the regularising of the [Company A] easement.

Response of the Committee

[37] The Committee advised that it would abide the decision of this Office. In doing so, it noted that it had not determined that Mr GR wilfully or deliberately misled LINZ; rather its view had been that he had breached r 2.5 of the Rules and the breach was sufficiently serious to amount to unsatisfactory conduct.

Mr GR's further submission

[38] In a subsequent 30 April 2018 submission to this Office Mr GR contends that:

(a) it is indisputable that he had the authority of the caveators to lodge the Second Instrument on or about 7 November 2016, a submission plainly premised on the fact that the consent itself is dated 4 November 2016;

(b) sending the Committee decision to the Registrar-General would potentially be hugely damaging to him as a conveyancing practitioner needing access to Landonline for his practice;[10]

(c) if his review is successful he seeks a sanction against the Committee with "an uplift to take account of the egregious features of its conduct" — in the course of his submissions he variously contends that the Committee's decision is untenable on the facts and either negligent or malicious;

(d) he should also have costs of $6,000 from the New Zealand Law Society pursuant to s 210 of the Act ($3,000 for each incorrect determination) and reimbursement from it of the filing fee on review; together, if possible, with

(e) fines or damages of $12,000 ($6,000 for each incorrect determination), failure to send him a copy of the determination and failure to advise him that a copy of the determination was sent to the Registrar-General of Land.

Review on the papers

[39] I record that having carefully read the complaint, the response to the complaint, the Committee's decision, the submissions filed in support of and in

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[10] The Complaints Service had in fact sent the Registrar-General a copy of the decision by letter of 9 February 2018.

opposition to the application for review and all other relevant materials accumulated in the process, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available, I have concluded that the review can be adequately determined in the absence of the parties.

[40] Neither party has objected to the review being dealt with on the papers. This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all the information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

The role of the LCRO on review

[41] The role of the Legal Complaints Review Officer (LCRO) on review is to reach his own view of the evidence before him. Where the review is of an exercise of 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.

Nature and scope of review

[42] The nature and scope of a review have been discussed by the High Court, which has said of the process of review under the Act:[11]

> … the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.
>
> The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to "any review" …
>
> … the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[11] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

[43] More recently, the High Court has described a review by this Office in the following way:[12]

> A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

[44] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee's determination, has been to:

(a) consider all the available material afresh, including the Committee's decision; and

(b) provide an independent opinion based on those materials.

Analysis

Land transfer e-dealings

[45] At the time of the events to which this review relates, lawyers practising conveyancing had the benefit of and were expected to adhere to the Property Transactions and E-Dealing Practice Guidelines promulgated by the Property Law Section of the New Zealand Law Society in 2012 (revised in 2015).

[46] Under the heading "Certifying documents correct" the Practice Guidelines read:

> 1.16 Signing a paper instrument correct or certifying and signing an electronic instrument is not a mere procedural step. Read all certifications prior to signing.
>
> 1.17 The purpose of the certificate is to assure the Registrar-General of Land that the instrument is correct. *If you are not aware of the circumstances surrounding a given transaction then you are not in a position to give the certification …*
>
> (emphasis added)

[47] It then recited r 2.5 of the Rules which, as I rehearse, says:

> 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.

[12] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

[48] In essence, the prohibition in the rule requires that the lawyer concerned take positive and reasonable steps to ensure that the truth of the matter in respect of which the lawyer has been requested or proposes to provide a certificate is accurate.[13] Only if the lawyer then "believes on reasonable grounds" that "the matter certified is true" may the lawyer provide the certificate concerned.[14]

[49] Under the then Land Transfer Act 1952, s 164A provided:

> (1) Every instrument to which this subsection applies must contain a certification that complies with subsection (3).
>
> (2) Subsection (1) applies to—
>
> (a) electronic instruments; and
>
> (b) paper instruments of a class specified for the purpose by regulations made under this Act.
>
> (3) Certifications must specify that—
>
> (a) the person giving the certification has authority to act for the party specified in regulations in relation to that class of instrument and that party has legal capacity to give such authority; and
>
> (b) the person giving the certification has taken reasonable steps to confirm the identity of the person who gave the authority to act; and
>
> (c) the instrument complies with any statutory requirements specified by the Registrar for that class of instrument; and
>
> (d) the person giving the certification has evidence showing the truth of the certifications in paragraphs (a) to (c) and that the evidence will be retained for the period prescribed for the purpose by regulations made under this Act.

[50] Self-evidently, these provisions were aimed at ensuring the integrity of the register and avoiding fraud. The advent in 2002 of e-dealings rendered all the more important that those authorised to conduct such transactions discharge their responsibilities with comprehensive and conscientious care and attention. The accuracy of e-dealing certifications is integral to the efficacy and reliability of that system.

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[13] The rule goes beyond r 3.03 of the New Zealand Law Society's Rules of Professional Conduct for Barristers and Solicitors (7th ed, New Zealand Law Society, Wellington, 2006) which required that "a practitioner must take reasonable steps to ensure that any certificate given by that practitioner under section 164A of the Land Transfer Act 1952 (LTA, and the Land Transfer Regulations 2002 as amended by the Land Transfer Amendment Regulations (No.2) 2007) is correct and complies with the statutory requirements".

[14] *PC v The Committee* LCRO 126/2017 (31 January 2018) at [41].

The relevant rules

[51] To repeat, rr 2.5 and 2.6 of the Rules provide:

> 2.5 A lawyer must not certify the truth of any matter to any person unless he or she believes on reasonable grounds that the matter certified is true after having taken appropriate steps to ensure the accuracy of the certification.
>
> 2.6 If a lawyer subsequently discovers that a certificate given by the lawyer was or has become inaccurate or incomplete to a material extent, the lawyer must immediately take reasonable steps to correct the certificate.

[52] The Committee decision recorded two findings of unsatisfactory conduct by Mr GR, being that in breach of r 2.5 of the Rules:

(a) in lodging the First Instrument for pre-validation on 21 September 2016 and signing that on 12 October 2016 he certified to LINZ that on those occasions he had authority to act for [Company A] and held evidence of the truth of that when he only obtained the appropriate A & I from [Company A] on 27 October 2016; and

(b) in lodging the Second Instrument (for pre-validation) on 7 November 2016 he certified to LINZ that the caveator had consented to that lodgement and he held evidence of the truth of that certification when he only received such consent from the purchasers' solicitors on 10 November 2016.

Mr GR's response

[53] Mr GR goes to some lengths to contest the justification for those findings and to say that, to the extent he might have been in error on his part, there were mitigating circumstances.

[54] His primary contentions and submissions are summarised at [36] and [38] above. Given the conclusions I reach, it is unnecessary to fully traverse the submissions recorded at [38].

[55] What is telling about the case Mr GR presents is that he either fails to confront, or appears to seek to circumvent, the inescapable reality on the materials before me that when it came to his lodgement of both the First Instrument and the Second Instrument, he gave false (because they did not accord with truth or fact) certifications to LINZ.

[56] In respect to the First Instrument instance, he falsely certified that he had authority to act for [Company A] and held evidence of the truth of that certification, and, in the Second Instrument instance, he falsely certified that he had the consent of the caveators and held evidence of the truth of that certification.

[57] Those inaccuracies are not only apparent from the factual narrative set out under the heading "background", but are also discernible from his own contentions and submissions.

[58] The latter point can be illustrated by resort to some examples:

(a) as set out at [36] (a) to (g) above, Mr GR begins by obliquely acknowledging in gradual terms the absence of authority to act for [Company A] at the time of the First Instrument and then — see (h) — more directly acknowledges the absence of that authority at that material time by referring to when he actually obtained it;

(b) referring to the Second Instrument, he promotes the inherently illogical proposition that it was fair to say that he did have the caveators' consent "as they had a binding agreement on this section" (see [36](m) to (n) above); but

(c) thereafter — see [38](a) above — he in effect argues that he had that consent because when that was provided to him (after the certifications in question were made), he could see that it was dated 4 November 2016.

[59] Mr GR's explanation for his failure to obtain the A&I from [Company A] before proceeding to register the easement, is one of honest mistake. He says that he held a genuine view that the authority he had secured from [Company B] was all that he required to support the [Company A] easement.

[60] That position, set out in Mr GR's correspondence to the LCRO of 28 February 2018, made concession to an error in understanding on his part.

[61] However, in his further correspondence to the LCRO of 30 April 2018, Mr GR's position has evolved to a more robust response in that he argues:

> … I cannot see any reasoning that supports the contention that I improperly certified that I had the authority to register an easement on behalf of [Company B] (which is what I did) on or about 12 October 2016. It is indisputable that I had signed the authority and instruction from [Company B] before I did this.

[62] Mr GR's argument that he is unable to identify any argument to support the contention that he improperly registered an easement on behalf of [Company B], diverts attention from the fact that the conduct finding did not arise from his attempts to register an easement in favour of a party who had provided him with necessary authority to do so, but rather that he had certified that he had authority to register an easement for [Company A], when he had no such authority to do so.

[63] Mr GR, understandably, was concerned if the conduct finding carried suggestion that he had set out to deliberately or intentionally mislead LINZ.

[64] The Committee's decision did not either directly or indirectly convey any suggestion that Mr GR's actions in registering the [Company A] easement were carried out in bad faith.

[65] However, a lawyer cannot find safe haven in argument that r 2.5 of the Rules is not breached if it is established that the mistaken certification provided by the lawyer was the result of simple error.

[66] Rule 2.5 demands that a lawyer must not certify the truth of any matter unless they believe on reasonable grounds that the matter they are certifying is true, and they have taken appropriate steps to ensure the accuracy of the certification.

[67] What he advances (as, for example, I identify at [36](a) to (f) above) falls well short of demonstrating any effort to appropriately ensure the accuracy of his certification of due authority from [Company A].

[68] Whilst I accept that Mr GR says he laboured under a misapprehension that he was able to consolidate the easements, it could be reasonably expected that a practitioner with 18 years' experience in conveyancing should have taken considerably more care in providing certification of matters around which he was uncertain. Mr GR concedes that he had had no previous experience in dealing with multi-lot subdivisions involving easements for [bb] utilities.

[69] It is concerning that he treated the understandably repeated inquiries of the purchasers' solicitors about, and the doubts they expressed as to, the existence of due authority from [Company A] with indifference and apparent obdurateness, in one instance resulting in him saying "I will not be sending you anything – why should I?" That being in response to a perfectly reasonable request for pertinent documentation.

[70] In addressing the complaint that he had certified the caveator's consent, Mr GR's responses also became more emphatic as he provided further submissions to bolster his argument.

[71] In his correspondence to the LCRO of 28 February 2018, Mr GR argues that he had difficulty recalling the exact time frames for the events relevant to the issues arising from the lodgement of the caveat.

[72] He notes that the caveat was registered on 1 November 2016 but says that there is no correspondence on his file to confirm that the purchasers' lawyer advised him that a caveat had been lodged.[15] He says that he had no idea the caveat existed until around 15 November 2016. Mr GR's uncertainty as to when he became aware of the caveat is noted at [37] (m) above.

[73] Mr GR is incorrect when he suggests that the purchasers' lawyer failed to advise him about the lodgement of the caveat. On Tuesday, 1 November 2016, the purchasers' lawyer forwarded an email to Mr GR at 4.38 pm, advising that a caveat had been registered. At 5.04 pm on that same day, in an email response in which I assume Mr GR was responding to notification that a caveat had been lodged, Mr GR said the following, "That's ridiculous [BC]. I am getting the titles fixed now".

[74] Mr GR is clearly mistaken when he suggests that he did not become aware that a caveat had been registered until around 15 November 2016.

[75] That error is further reinforced by the fact that on 10 November 2016, Mr GR made request of the purchasers' lawyer to remove the caveat.

[76] In the easement instrument lodged by Mr GR with Landonline on 7 November 2016, Mr GR certified that the caveator under [XXXXXX] had consented to the transaction which was subject to the caveat, and that he held that consent.

[77] The purchasers (as caveators) executed a consent to registration of the surrender of the first easement, and grant to registration of further easements, on 4 November 2016.

[78] That consent was forwarded to Mr GR on 10 November 2016. Mr GR in his response to the LCRO of 30 April 2018, submits that it was indisputable that he had the consent of the caveators to lodge the replacement easement on or about 7 November

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[15] I note that the transaction was managed for the purchaser by a legal executive but for convenience will refer to the legal executive as the purchasers' lawyer.

2016, and contends that the Committee's determination dealing with the issue of the second easement was either "negligent or malicious".

[79] There is no indication that Mr GR had received confirmation in the form required, that he was holding a consent from the caveators prior to lodging the instrument on 7 November 2016. Surprisingly, he disavows knowledge of the existence of the caveat until around 15 November 2016, this despite the evidence of him being advised on the day the caveat was lodged, his correspondence with the purchaser's legal executive concerning the caveat, and his accurate description of the caveat in the pre-validation instrument lodged with Landonline on 7 November 2016.

[80] Mr GR now calls in aid[16] an asserted adherence to r 2.6 of the Rules:

> If a lawyer subsequently discovers that a certificate given by the lawyer was or has become inaccurate or incomplete to a material extent, the lawyer must immediately take reasonable steps to correct the certificate.

[81] However, his conduct in 2016 does not equate with the contention that he took immediate steps to correct matters. Nor does Mr GR bring forward any facts to substantiate his claim that he had reasonable grounds to believe that the matters certified were true after having taken appropriate steps to ensure the accuracy of the certification (relevant to r 2.5).

[82] And what he says, as for example recorded at [36](l) to (n) above, about possession of the caveator's consent, falls similarly well short of the mark.

[83] In the end, his responses only serve to draw attention to or underscore a troubling lack of appreciation of the reliance of the e-Dealing system on the need for attentive and careful attention to the certification process.

Result

[84] Having considered the matter afresh, as I am required to do, I see no grounds which could persuade me to depart from any aspect of the Committee's decision and orders.

Costs

[85] Where a finding of unsatisfactory conduct is made or upheld against a practitioner on review it is usual that a costs order will be imposed. I see no reason to depart from that principle in this case.

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[16] Email to LCRO (28 February 2018).

[86] Taking into account the Costs Guidelines of this Office, the practitioner is ordered to contribute the sum of $900 to the costs of the review, that sum to be paid to the New Zealand Law Society within 30 days of the date of this decision.

[87] The order for costs is made pursuant to s 210(1) of the Lawyers and Conveyancers Act 2006.

[88] Pursuant to s 215 of the Lawyers and Conveyancers Act 2006 I confirm that the order for costs may be enforced in the civil jurisdiction of the District Court.

Publication

[89] Pursuant to s 206(4) of the Act I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

Decision

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

DATED this 13th day of May 2020

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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:

Mr GR as the Applicant
[Area] Standards Committee [X] as the Respondent
The New Zealand Law Society