

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2020] NZLCRO 76

Ref: LCRO 35/2020

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

RS

Applicant

AND

HM

Respondent

DECISION

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

Introduction

[1] Mr RS has applied for a review of a decision by the [Area] Standards Committee [X] to take no further action in respect of his complaint concerning conduct on the part of Ms HM.

Background

[2] Mr RS wanted his relationship property agreement set aside. He contacted Ms HM seeking her assistance and provided her with some information. He believes he is entitled to legal aid.

[3] Ms HM considered the information Mr RS had provided and indicated her preliminary view was that he would be unlikely to succeed.

[4] Undeterred, Mr RS wished to proceed.

[5] Ms HM informed Mr RS that she was not prepared to work on his matter under legal aid. Ms HM said she would accept Mr RS's instructions if he paid her \$10,000 in advance, and that she would provide him with a formal written opinion.

[6] Mr RS did not pay \$10,000.

[7] The retainer did not proceed.

[8] Mr RS believes Ms HM has no excuse for not accepting his instructions. He made a complaint along those lines to the New Zealand Law Society (NZLS).

The complaint and the Standards Committee decision

[9] The Committee determined Mr RS's complaint pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act), having concluded that further action on the complaint was not necessary or appropriate. It did not consider Ms HM was obliged to act without security for her "normal fee".

Application for review

[10] Mr RS's application for review is advanced on the basis that \$10,000 is not a "normal" fee by any objective measure, and is an excessive one for the service he wanted Ms HM to provide.

Strike Out – Section 205(1)

[11] Mr RS's application for review has been determined under s 205(1)(a) of the Act which says:

(1) The Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that it—

(a) discloses no reasonable cause of action;...

Nature and scope of review

[12] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:¹

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

... 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 particular 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.

[13] More recently, the High Court has described a review by this Office in the following way:²

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.

Discussion

[14] While there is more to it, the nub of Mr RS’s complaint was that Ms HM refused to act for him without him providing her with \$10,000 to secure her fee.

[15] Ms HM provided Mr RS with a preliminary view without charge. She was not confident he could succeed. She told him that. He did not accept her answer and attempted to persuade Ms HM to act on his terms.

[16] Ms HM was not professionally obliged to act for Mr RS on any terms he might have wished to dictate.

[17] Ms HM was not professionally obliged to act for Mr RS pursuant to a grant of legal aid.

[18] Ms HM was not professionally obliged to act for Mr RS without security for her fees.

[19] As the retainer did not proceed, Ms HM did not charge Mr RS a fee, normal or otherwise.

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

[20] Like Mr RS's complaint, his application for review discloses no reasonable cause of action under the Act.

[21] The materials disclose no evidence that suggests further action on Mr RS's complaint is necessary or appropriate. As a rearticulation of his complaint coupled with an argument that \$10,000 was an abnormal expectation to set for a fee, the review application cannot succeed. There is no reason not to strike out the whole of Mr RS's application for review.

[22] In the circumstances the whole of Mr RS's application for review is struck out. The Committee's decision is unaffected.

Decision

Pursuant to s 205(1)(a) of the Lawyers and Conveyancers Act 2006 Mr RS's application for review is struck out in whole because it discloses no reasonable cause of action.

DATED this 27TH day of MAY 2020

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:

RS as the Applicant
HM as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society
Secretary for Justice